TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. [illegible] 61

CATHERINE SHIELDS ET AL., PLAINTIFF IN ERROR,

vs.

ARTHUR SHIFF.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED OCTOBER 4, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 997.

CATHERINE SHIELDS ET AL., PLAINTIFF IN ERROR,

vs.

ARTHUR SHIFF.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 *Petition. Filed March 15th*, 1883.

State of Louisiana, Civil District Court for the Parish of Orleans.

CATHERINE SHIELDS, widow, etc., & *als.*,
vs.
ARTHUR SHIFF.
} No. 8102. Division "A."

To the honorable the judges of the civil district court for the parish of Orleans:

1. The petition of Catherine Shields, widow of the late Gabriel B. Shields, a resident of Mississippi, avers that she was a sister of the late Eustace Surget, formerly a resident of the State of Mississippi; of Catharine C. B. Merrill, Dunbar S. Merrill, Jane S. Merrill, all of whom reside in the State of Mississippi; of Ann Merrill, wife of H. Albert DuBarry, and of said H. Albert DuBarry herein appearing to aid and authorize his wife; of E. Surget Merrill and Ayres P. Merrill, all of whom reside in Antwerp, Belgium, and of
2 Francis S. Merrill, who resides in New York, all of whom are the children and only surviving descendants of Jane Merrill, their mother, who was a sister of the late Eustace Surget, and who stand in her stead by representation; and of Alfred V. Davis, Jr., and Lillie V. Davis, who reside in Louisiana, who are the children and only surviving descendants of Sarah Davis, their mother, who was a sister of the late Eustace Surget, and who stand in her stead by representation.

2. Petitioners shew that all of the above-named parties are nearest relatives and only heirs-at-law of the late Eustace Surget, who left neither ascendants nor descendants.

3. Petitioners shew that the said Eustace Surget, in the year 1860 and thereafter, owned certain property situated in the city of New Orleans, and described as follows, viz:

Three certain lots of ground, with all the buildings and improvements thereon, situated in the second district in this city, in the square bounded by Rampart, Conti, Basin, and Bienville streets, and designated by the lots Nos. 5, 6, & 7, as per plan drawn
3 by the city surveyor on the 12th of May, 1819, and deposited in the office of De Armas, notary public, and measuring, lot No. 5, 32 feet 10 inches front on both Rampart and Basin streets; lots Nos. 6 & 7, each 31 feet front on both Rampart and Basin streets, all these lots having each a depth of 120 feet.

A certain lot of ground, with all the buildings and improvements thereon, situated in the same square adjoining lot number 5, on the line towards Conti street, measuring 33 feet 3 inches, more or less, French measure, front on both Rampart and Basin streets, by a depth of 120 feet, acquired by purchase from R. P. Hunt, as per act passed before Theo. Guyol, notary public, dated April 18th, 1860, together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging or in anywise appertaining.

4th. Petitioners shew that in the suit of the United States *vs.* Thirteen Lots of Ground, the property of Eustace Surget, No. 7978 of the

docket of the United States district court for the district of
4 Louisiana, instituted under the act of Congress of July 17th, 1862, the United States proceeded to condemn and confiscate the hereinabove-described property as that of Eustace Surget, and all his right, title, and interest thereto, and to that end, in due course of proceedings, a decree of condemnation was made on the 4th day of April, 1865, and the said property thereunder was sold at United States marshal's sale on the 30th day of May, 1865, to Arthur Shiff, who became the purchaser at said sale. all of which appears fully from the record in said suit, to which special reference is hereby made for greater certainty.

5. Petitioner shews that said Shiff has been in possession of said property from February 1st, 1882, deriving rents and revenue therefrom, and continues in possession of same.

6th. That Eustace Surget died on or about the first day of February, 1882, and that your petitioners have been entitled to the possession and enjoyment of said property since the date of the death of said Surget, viz., Feb. 1st, 1882.

7th. That the value of said property largely exceeds the sum of one thousand dollars, and that it is worth a monthly rent of
5 two hundred dollars, which your petitioners are entitled to recover from said Shiff from the first day of February, 1882, to delivery of possession to them of said premises, which the said Shiff has and continues to detain illegally.

Wherefore, the premises considered, petitioners pray that Arthur Shiff be cited to appear and answer this petition after due proceedings had; that there be judgment in their favor, decreeing them to be owners of the property hereinabove described, and entitled to the possession thereof since the first day of February, 1882; and petitioners further pray for judgment against said Shiff for the sum of two hundred dollars per month for rent and damages for use and occupation of said premises from the first of February, 1882, for each and every month, with legal interest on said amounts from the day they are respectively due until delivery thereof, and they pray for costs and general relief.

(Signed) BREAUX & HALL,
Att'ys for Petitioners.

Answer. Filed April 3d, 1883.

CATHERINE SHIELDS, widow, etc., & *als.*,
vs.
ARTHUR SHIFF. } No. 8102. Division "A."

6 To the honorable the civil district court for the parish of Orleans:

Into this court comes the defendant and, reserving the benefit of all manner of exception, for answer says that he denies each and every allegation in the plaintiffs' petition contained which is not hereinafter specially admitted.

And for answer this defendant specially denies that the petitioners are, as they allege themselves to be, "the nearest relatives and only

heirs-at-law of the late Eustace Surget, who left neither ascendants nor descendants," and requires strict and legal proof thereof.

And defendant, further answering, says that he is the owner and in possession of the property described in the plaintiffs' petition by good and lawful title, having acquired the same at a public sale thereof made by the civil sheriff of the parish of Orleans on the third day of August, 1880, under and by virtue of a writ of seizure and sale issued by the late fifth district court for the parish of Orleans in suit No. 10780 of the docket of said fifth district court,

7 entitled Arthur Shiff *vs.* Eustace Surget, and in virtue of a decree of said court in said suit for the foreclosure of the mortgage therein mentioned of the 28th of January, 1860, granted by Robert P. Hunt, a former owner, upon said property in favor of Edward Shiff for twenty-four thousand dollars, interest, attorney's fees, &c., and which mortgage the said Eustace Surget, in his act of purchase of the 18th April, 1860, from said Robert P. Hunt, assumed and promised to pay as part of the price, said Arthur Shiff being the holder of the note secured by said mortgage, as the whole will more fully appear from said act of the 28th January, 1860, and 18 April, 1860, before Theodore Guyol, notary public, and from the record and proceedings in said suit of Arthur Shiff *vs.* Eustace Surget, No. 10780, and in the matter of the defendant praying for a monition, No. —, of the records of this court which are prayed to — taken and considered as part hereof.

Wherefore defendant prays that plaintiffs' demand be rejected, and that there be judgment in favor of this defendant with costs, and for general relief.

(Signed) T. GILMORE & SONS,
For Defendant.

8 *Motion and Rule Absolute.*

Extract from the Minutes, May 25, 1883.

CATHERINE SHIELDS, widow, etc., *et al.*, *vs.* ARTHUR SHIFF. } No. 8102. Division "A."

On motion of Breaux & Hall, and for the reasons therein, it is ordered that defendant show cause Friday, 25th May, why the evidence taken should not be read and used as evidence on the trial of the case, in so far as the form and manner of executing said commission are concerned.

The above rule having been submitted, is ordered to be made absolute, and said evidence used on the trial of the cause upon its merits.

Notes of Evidence Taken in Open Court before the Hon'l A. L. Tissot, Judge, May 29th, 1883. Filed June 14th, 1883.

CATHERINE SHIELDS, widow, etc., *et al.*, *vs.* ARTHUR SHIFF. } No. 8102. Division "A."

Colonel Breaux offers in evidence the return of the commission issued to Frederich Parsons, United States commissioner residing in Mississippi, the testimony specially of Catherine Shields, George N. Koontz, T. Otis Baker, and Stephen Duncan; also offers in evidence the certificate of the death of Eustis Surget, vised by the American consul in Paris on the 14th day of February, 1882. Next offers in evidence the act of sale of Robert P. Hunt to Surget, of date April 18th, 1860, including the certificate of recordation. Next offers in evidence the records of the proceedings of the case of the United States against 13 Lots of Ground, the property of Eustis Surgett, No. 7978 of the United States district court, and offers of them record, specially the title of seizure and decree of condemnation; the writ of —— ——, the adjudication under it, and the intervention of Arthur Shiff, and the decree of distribution; also offers in evidence the statement of Mr. Davies to show that the rents of the property since the first day of February, 1882, have been collected at the rate of $150.00 per month.

Note.—Defendant offers in evidence the same paper to show the expenses on the property, taxes, insurance, and repairs, during the same period of time. It is admitted that Mr. Shiff has been in possession of that property since the mashal's sale, and is still in possession thereof. Date of marshal's sale, May, 8865.

It is also admitted that the value of the property exceeds $5,000.00.

Note.—Mr. Gilmore offers in evidence the record of the suit of Arthur Shiff against Eustis Surget, No. 205 of the docket of this court, and 10780 of the late 5th district court, including the motion and the judgment thereupon, the *fi. fa.* and return, and everything therein.

Note.—Colonel Breaux objects, on the ground that it is immaterial to this suit what Mr. Eustis Surget may have done, or what may have been done against Mr. Surget, after the confiscation of that property. That no proceeding against Mr. Surget, who was entirely disconnected with that property, can possibly effect the heirs, who become the owners of that property in fee-simple from the date of the confiscation, and that any proceedings against him during his lifetime cannot effect their title, and therefore it is immaterial and irrelevant to *to* any issues between the heirs and the property confiscated, and, therefore, that the whole of these proceedings are immaterial.

Objection overruled. Bill of exceptions reserved, and his note taken in lieu thereof.

Note.—Mr. Gilmore offers in evidence the sheriff's deed of sale to Fred. Shiff, of the 3d of August, in confirmation of the adjudication in August 3d, 1880, and now filed.

Same objection, same ruling, same bill of exceptions.

Note.—Mr. Gilmore offers in evidence the tax bills of State and city taxes and insurance bills paid upon this property.

Note.—Mr. Gilmore offers in evidence the recordation of the act of mortgage from R. P. Hunt to Edward Shiff; also the recordation and the certificate from the recorder of mortgages; also certificate of recordation of the act from Hunt to Surget; also the certificate in the transcript at page 21 of the reinscription.

Note.—Colonel Breaux offers in evidence certificate of the recorder of mortgages to show that neither of those mortgages were reinscribed from 1860 to 1879.

Note.—Defendant offers in evidence copy of the will of Eustis Surget, no objection being made to the form or want of probate.

Note.—Colonel Breaux objects, as being entirely irrelevant to any of the issues before the court.

11½ The court admits the document for the purpose of showing that the plaintiffs are not the legal heirs of the deceased, but that Mrs. Surget, the widow of the deceased, is.

To this restriction upon the offer defendant excepts, and issues a bill of exceptions.

A true copy of the original on file in this office, 27th February, 1884.

[SEAL.] E. A. LUMINAIS,
D'y Clerk.

The above note of evidence, left out by mistake in copying the record, is hereby supplied.

March 3, 1884.

(Signed) BREAUX & HALL,
(Signed) T. GILMORE & SONS,
Att'ys for Defendants.

12 *Certificate of Recorder of Mortgages. Offered in Evidence by Plaintiff. Filed June 14th,* 1883.

CATHERINE SHIELDS, widow, &c., *et al.*,
vs.
ARTHUR SHIFF.
No. 8102.
Division "A."

EUGENE MAY, Recorder of Mortgages
for the parish of Orleans,
Office: Cor. Royal and Conti streets.

NEW ORLEANS, *June 2d,* 1883.

I, the undersigned, recorder of mortgages in and for the parish of Orleans, do hereby certify that the mortgage granted by R. P. Hunt to Edward Shiff by act before Theodore Guyol, on the 28th January, 1860, and duly recorded 30th January, 1860, in book 74, fo. 512, and recorded in this office on the 2d day of April, 1879, in book 176, fo. 133, does not appear from the books of this office to

have been reinscribed between said dates of inscription and re-recording.

[SEAL.] (Signed) GEO. GUINDUET,
D'y Clk.

13 *State Tax Receipt for* 1882. *Offered in Evidence by Plaintiff. Filed June* 14*th*, 1883.

STATE OF LOUISIANA, *Parish of Orleans:*

State taxes for 1882. No. 2508, fol. 258.

SHIELDS *vs.* SHIFF. } No. 8102. Division "A."

NEW ORLEANS, *Dec.* 18, 1882.

Received of M. Arthur Shiff one hundred and eight $\frac{0}{100}$ dollars, amount of State taxes for the year 1882, on the property, etc., described on the reverse hereof in accordance with law.

$108.00. (Signed) P. L. BOUNY,
Tax Collector.

Notice.
Suit, $108.00

Endorsed:

Representative district capital in trade, etc., square No.—
" horses & carriages, etc. "
" furniture, etc., "
" income, "
4. Real estate, square No. 122 ..... $18,000

Certified Copy of Last Will and Testament of Surget. Offered in Evidence by Plaintiff, & Filed June 14*th*, 1883.

[Stamp.]

Copy.

14 Be it known that I, Eustace Surget, formerly a resident of the city of New Orleans, Louisiana, in the United States of America, and at present residing in the city of Bordeaux, France, being of sound mind and of lawful age, do hereby constitute and make this my last will and testament conjointly with a will of same ten*ure*, and written in French.

I give and bequeath to my beloved wife, Mary Atwell Surget, née Linton, all my property, both personal and real estate, of whatsoever nature or description, located either in the United States of America, in Great Britain, or in Europe, to have and to hold in her own right, without reserve or equivocation, simply enjoining upon her to pay all my just debts, if any such exist, as promptly as possible, and to restore to her sister, Charlotte B. Surget, all articles of jewelry given to me by the said sister which formerly belonged to her late husband, Francis Surget, or in the event of the death of said Charlotte B. Surget previous to my own demise, the said arti-

cles of jewelry to be sold for the benefit of the Linton family in Washington city.

I further name and appoint my said wife as sole executrix
15 of my estate, with the recommendation that she associate with her, as her adviser, my good friend, William T. Martin, of Natchez, Mississippi, and it is my desire that she present to the said William T. Martin, as a souvenir of myself, my large double-cased independent $\frac{1}{5}$ of a second gold watch, with my monogram on one side and coat-of-arms on the other.

This signed and executed by me, in the city of Bordeaux, France, this eleventh day of July, A. D. eighteen hundred and seventy-two, all former wills heretofore made and written by me being hereby revoked.

(Signed) E. SURGET.

Codicil.

I hereby forcibly enjoin upon my dear wife, or should she not be living at the time of my own demise, upon my natural heirs, to make immediately unto Arthur Shiff, of the city of New Orleans, Louisiana, a clear and valid title to certain property situated on Rampart street, in that city, and conveyed to him by me by notarial act executed by me before T. O. Starke, notary public, in the city of New Orleans, on the 18th July, 1866, the confiscation laws of the U. S. Government having deprived Mr. Shiff up to the pres-
16 ent time of the full enjoyment and possession of said property, which is justly his, it having been my fixed and honest intention to make him a good and valid title to the said property.

This done and signed by me, this twelfth day of November, 1879.

(Signed) E. SURGET.

I, the undersigned, notary public at Bordeaux, France, do certify and attest that the present copy of the will and testament of Mr. Eustace Surget is conformable to the original, deposed in my archives, and that all men can have perfect confidence therein.

Bordeaux, 14 day of February, 1882.

[SEAL.] (Signed) LIREAU, *N. P.*

Vu pour legislation de la signature de M. Lireau, notaire, par nous juge au tribunal de première instance de Bordeaux, delegué par monsieur le president.

Bordeaux le 14 Fevrier, 1882.

[L. S.] Signe. CALUE.

UNITED STATES CONSULATE, BORDEAUX.

I do hereby certify that the annexed seal and signature are those of Calue, judge of the tribunal of the first instance of Bordeaux,
17 France, and that to all official acts thus attested full faith and credit are and ought to be given.

Witness my hand and official seal this fourteenth day of February, eighteen hundred and eighty-two.

[L. S.] (Signed) GEO. W. ROOSEVELT,
United States Consul.

THE STATE OF MISSISSIPPI, *Adams County:*

I, Ailison H. Foster, clerk of the chancery court of said county, do hereby certify that the foregoing is a true and perfect transcript of the copy of the original will and codicil thereto of Eustace Surget, late of Bordeaux, France, deceased, as the same remains on file (but not yet probated) in my office.

Witness my hand and the seal of said court, at the city of Natchez, this 1st day of June, A. D. 1883.

[SEAL.] (Signed) ALLISON H. FOSTER, *Clerk.*

Certificate of Death of Eustace Surget. Offered in Evidence by Plaintiff. Filed June 5th, 1883.

Département de la Gironde. No. d'ordre ——. 1ère section No. 169.
Mairie de la ville de Bordeaux.

[Timbre] SURGET, EUSTACE.

18 Etat Civil.—Extrait.

Du registre des actes de decés de l'an 1882.

Le premier Février, mil huit cent quatre vingt-deux, à quatre heures du soir, pardevant nous, adjoint du maire de la ville de Bordeaux, délégue pour remplir les fonctions d'officier de l'état civil, ont comparu les sieurs Fernaud Barreyre, âgé de trente huite ans, employ, rue de Lyon, 67, et François Monbauché, âgé de quarante deux ans, employé rue Cateos, 8, lesquels nous ont declare que Eustace Surget, âgé de cinquante un ans, natif de Natchez, Mississippi, (Etats-Unis), proprietaire, epoux de Mary Atwell Linton, fils de François Surget et de Elise Dunbar, son époux, est décédé ce matin à onze heures, rue de la Course, 115.

Lecture faite du present, les comparant ont signé avec nous.

Signé au registre: F. Barreyre, F. Monbauché & l'adjoint de maire, Ch.-Gadeu.

Pour extrait conforme au registre, delivre en l'Hôtel de ville de Bordeaux, le dix Février mil huit cent quatre vingt deux.

L'adjoint au Maire,

[SEAL.] (Signé) C. GADEU.

19 Vu pour légalisation de la signature de Mr. Gadeu, adjoint, par nous juge du tribunal de première instance de Bordeaux, delegue par Mr. le president.

(Signé) CALVE.

NOTA.—Le present acte doit être legalise par le president du tribunal civil pour servir hors du departement cette legalisation coûte 25 centimes en sus des frais ci-après.

Timbre, f	1 80
Droit d'expedition	50
Total, f	2 30

Commission. Offered in Evidence by Plaintiff. Filed June 5th, 1883.

Civil District Court for the Parish of Orleans.

CATHERINE SHIELDS, Widow, &c.,
vs.
NOAH REDDICK COTTEN & *al.*
} No. 8229. Civil District Court.

CATHERINE SHIELDS *et als.*
vs.
ARTHUR SHIFF.
} No. 8102.

The State of Louisiana to Frederick Parsons, a Louisiana commissioner, residing at Natchez, Miss., Greeting:

Know ye, that we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority diligently to examine all witnesses whatever, as well on the part of the plaintiff as of the defendant, in a certain suit now pending in the civil district court for the parish of Orleans, wherein Catherine Shields *et als.* are plaintiffs and Arthur Shiff is defendant.

Witnesses: T. Otis Baker, Geo. W. Kountz, Catherine Shields, and Stephen Duncan, Natchez, Miss.

Therefore we desire you that at certain times and places, by you to be appointed for that purpose, you cause the said witnesses to come before you, that you then and there examine them apart upon their respective corporal oaths, first taken before you upon the Holy Evangelist, that you reduce their examinations to writing, and cause the witnesses to sign the same, and when you shall so have taken them that you send the same, with this commission, closed up under your seal to us, in our civil district court, in the city of New Orleans, without delay.

Witness the Honorable A. L. Tissot, judge of said court, this 12th day of April, in the year of our Lord one thousand eight hundred and eighty-three, and in the 107th year of the Independence of the United States.

(Signed) GEO. P. CAZELAR,
D'y Clk.

Interrogatories Propounded to Stephen Duncan & als., Annexed to Commission, & Offered in Evidence by Plaintiff.

Civil Dist. Court.

CATHERINE SHIELDS & *als.*
vs.
ARTHUR SHIFF.
} No. 8102. Division "A."

Interrogatories propounded to T. Otis Baker, George W. Kountz, and Catherine Shields, and Stephen Duncan, witnesses residing in Natchez, Mississippi, the answers thereto to be used in evidence on the trial of the above-entitled cause:

Interrogatory 1st. What is your full name, age, and residence?

Interrogatory 2d. Did you ever know Eustace Surget, late a resident of Natchez, Mississippi? If so, state how long you have known

him. Whether you knew his father and mother, and whether they, or either of them, are living now, or were living on the 1st Feb., 1882, & who they were? Whether he was ever married, and whether he left children of his marriage or descendants?

Interrogatory 3d. If you say that he left no descendants, and that his father and mother were both dead at the date stated, then state whether you know his collaterals, by which we mean his
22 brother and sisters, if any. Who they were; whether living or dead on Feb'y 1st, 1882, and if dead, whether any children of such brother and sisters were living at said date? If any, state who they were & whose children.

Interrogatory 4th. If you say that he had sisters, state whom each one of them married.

Interrogatory 5th. Do you know what has become of said Eustace Surget? Where was he in the early part of 1882, and what then became of him?

Interrogatory 6th. Do you know whether the said Eustace Surget had, or was reputed to have, property in the city of New Orleans, State of Louisiana, in 1861, and thereafter? If yea, what became of it, and what was said to have become of it?

Special interrogatory to Stephen Duncan, Esq.: Do you know anything of the death of Eustace Surget? If yea, state all you know about it, and how you know it.

Interrogatory 8th. To all the witnesses: This a suit instituted by the heirs-at-law of Eustace Surget to recover certain property situated in New Orleans, formerly belonging to him, and con-
23 fiscated at the suit of the United States Government under the act of Congress of July 17, 1862, and you are hereby required to state all facts within your knowledge that may aid them in their suit the same as if specially interrogated in reference to such facts.

(Signed) BREAUX & HALL,
Attorneys for Plaintiffs.

Apr. 7, '83.

Agreement.

It is agreed that a commission to take the depositions of above-named witnesses shall issue, directed to Frederick Parsons, a Louisiana commissioner, residing at Natchez, Mississippi, and that the affidavit of materiality of testimony is waived.

(Signed) T. GILMORE & SONS, *Att'y-.*

Objections of Defendant.

CATHERINE SHIELDS *et al.*
vs.
ARTHUR SHIFF. } No. 8102.

The defendant, reserving the benefit of all legal objections to the interrogatories propounded to the above-named witnesses, and particularly objecting to their 6th interrogatory as tending to prove

title to real estate by parol — propounds the following cross-interrogatories:

24 1. What is your business?

2. Were you related to Eustace Surget, and in what degree?

3. When did you last see him?

4. Was he married more than once, and to whom, or when was such marriage dissolved?

5. Did he have a last will and testament, and where is the same, or a duly certified copy of it; have you seen it?

6th. Give the names and ages of all the collateral kindred of Eustace Surget, their residence, ages, and occupations.

7. How do you know the facts to which you have testified?

8th. State nothing except from your own personal knowledge.

(Signed) T. GILMORE & SONS,
for Def't.

Depositions of Catherine Shields, F. Otis Baker, Stephen Duncan, Geo. W. W. Koontz. Offered in Evidence by Plaintiff. Filed June 5th, 1883.

CATHERINE SHIELDS *et al.*
vs.
ARTHUR SHIFF. } No. 8102.

The depositions of Catherine Shields, T. Otis Baker, Stephen
25 Duncan, and George W. Koontz, witnesses on the part of plaintiffs in the case of Catherine Shields *et als. vs.* Arthur Shiff, No. 8102, now pending in the civil district court of the State of Louisiana, for the parish of Orleans, division "A."

In pursuance of the foregoing and annexed commission to me directed by the clerk of said court, I did, at my office, in the city of Natchez, State of Mississippi, cause said witnesses to come before me, as follows: Catherine Shields, April 25th, 1883; T. Otis Baker and Stephen Duncan, April 26th, 1883, and George W. Koontz on May 3d, 1883; and said witnesses, after having been by me duly sworn on the Holy Evangelists to testify the truth, the whole truth, and nothing but the truth, in answer to interrogatories and cross-interrogatories read to them by me, and which interrogatories and cross-interrogatories were received by me with said commission and are hereto annexed and returned with said commission and these depositions, testified as follows, to wit:

Answer to interrogatory 1st: My name is Catherine Shields; I am sixty-six years of age; residence, Adams county, State of Mississippi.

26 Answer to interrogatory 2d: I knew him all his life; he was my brother; his father and mother were my parents; they were both dead on the 1st of February, 1882; he was married twice, but left no children; he never had any children.

Answer to interrogatory 3d: I knew his brothers and sisters; they were mine also; they were Fra-cis Surget, Lenox Surget, Jane Surget, Sarah Surget, and Catherine Surget, now Shields (myself); these

brothers and sisters are all dead on the 1st February, 1882. Francis Surget left no descendants; Lenox Surget never was married; Jane Surget married Ayes P. Merrill; she died in 1866, leaving the following-named children: Catherine Merrill, Anna Maria DeBarry, Dunbar Merrill, Jennie Merrill, Ayes P. Merrill, Francis Merrill, Surget Merrill; Sarah Surget married Alfred V. Davis, and died leaving the following-named children: Alfred V. Davis and Lillie V. Davis.

Answer to interrogatory 4th: Jane Surget married Ayes P. Merrill; Sarah Surget married Alfred V. Davis; I married G. B. Shields.

Answer to interrogatory 5th: He died in Europe; he was
27 at Boredeaux, France, in the early part of 1882; he died there on February 1st, 1882.

Answer to interrogatory 6th: Yes; I knew he had property in New Orleans, La., in 1861, and afterwards I heard that it was confiscated by the United States after the occupation of the city of New Orleans by the Federal forces.

Answer to interrogatory 8th: I have, I think, stated all I know about the matter.

Answer to cross-interrogatory 1st: Land holder.

Answer to X interrogatory 2d: I am his sister.

Answer to X interrogatory 3d: In 1876.

Answer to X interrogatory 4th He was married twice; he first married Mrs. Flowers, the marriage was dissolved in 1866; he afterwards married a Miss Linton; that marriage was dissolved by his death.

Answer to X interrogatory 5th: I have been informed that he left a will, but I have never seen it; I do not know where it is or a copy of it.

Answer to X interrogatory 6th: If by collaterals, is meant his brothers and sisters, and their descendants, I have answered that fully in answer to direct interrogatory.

28 Answer to X interrogatory 7th: My answers are made from my own personal knowledge.

Answer to X interrrogatory 8th: I have not.

(Signed) CATHERINE SHIELDS.

The further taking of depositions in this cause is adjourned to April 26, 1883, at 12 noon.

Witness my hand April 25th, 1883, at 3 p. m.

(Signed) FRED. PARSONS,
Commissioner.

APRIL 26TH 1883, 12 *Noon.*

T. OTIS BAKER, sworn:

Answer to interrogatory 1st: My name is Thomas Otis Baker; my age, thirty-nine years; residence, Natchez, Miss.

Answer to interrogatory 2d: I did know Eustace Surget, formerly a resident of Natchez, Miss., but more recently a resident of Bordeaux, France. I was acquainted with him from my boyhood, and had

intimate business relations with him from the year 1876 to the day of his death, having been during said last-mentioned period his general agent and attorney in the United States. I was
29 acquainted with his father, but not with his mother. His father was Captain Frank Suget, and his mother Eliza Surget. His said father and mother are not living now, and were not living on the 1st February, 1882. I know this from not having seen them for a great many years, and from the inscriptions on the tombstone in the family burying-ground, and from the records of the probate proceedings upon their estates in the office which is now known as the clerk of the chancery court of Adams county, State of Miss. I know that Mr. Eustis Surget has been once married, and I have heard that his last marriage was a second marriage. I have never known or heard of his having any children by either marriage, and, of course, of no descendants.

Answer to interrogatory 3d: Not being related to his family, I cannot say that I have any personal knowledge of its genealogy, but, from knowledge derived from general notoriety and repute, and from declarations of members of the family, made in connection with other proceedings than this, I could say that he had two brothers and three sisters. The two brothers were Francis and Lenox Surget;
30 both died prior to February 1st, 1882, leaving no children or descendants of them. His sisters were Jane, Sarah, and Catherine Surget. Jane married A. P. Merrill, Jr., and died prior to February 1st, 1882, and left surviving her seven children, now living, named Catherine C. B. Merrill, Anna Maria Merrill, now the wife of H. Abert DeBarry; Dunbar S. Merrill, Jane S. Merrill, Ayes P. Merrill, Francis S. Merrill, and E. Surget Merrill. Sarah Surget married Alfred V. Davis, and died prior to February 1st 1882, leaving surviving her two children, now living, named Alfred V. Davis, Jr., and Lillie Davis. Catherine Surget married Gabriel B. Shields, and is now living.

Answer to interrogatory 4th: I have answered this fully in answer to interrogatory 3d.

Answer to interrogatory 5th: Eustace Surget is dead, having departed this life on the 1st day of February, 1882. He was then, and had been for some time prior thereto, in the city of Bordeaux, France. My knowledge of the fact of his death at the said time and place is derived principally from authenticated copies of the record of proceedings of the tribunal of first instance at Bordeaux, in
31 connection with the opening, registering, and filing of his olographic will and testament, which were sent to me to be used in probating his said will in this country, some of which copies are now on file in the office of the clerk of the chancery court of Adams county, Miss.

Answer to interrogatory 6th: I have no knowledge of Eustace Surget owning property in New Orleans in 1861, or thereafter, except what I have derived from common report, and some allusions to it in his last will and testament. From these it would appear that he did own some property in New Orleans in or about said year, and that it was confiscated.

Answer to interrogatory 8th: I know nothing more than what I have already stated in answer to the preceding interrogatories.

Answer to cross-interrogatory 1st: Attorney-at-law.

Answer to cross-interrogatory 2d: I was not related to Eustace Surget.

Answer to X interrogatory 3d: I last saw him in the fall of 1876, when he was on a short visit to this country.

32 Answer to X interrogatory 4th: I know nothing more as to his marriages than what I have stated in answer to direct interrogatory 2d, except that his last marriage was to Mary Atwell Linton, who still survives him.

Answer to X interrogatory 5th: Col. Eustace Surget left a last will and testament, the original of which was deposited, and, I believe, still is deposited, with Mr. Lerian, notary public in Bordeaux, France, and a duly certified copy of it is still on file in the office of the clerk of the chancery court of Adams county, Miss. I have never seen the original, but have seen said certified copy.

Answer to X interrogatory 6th: I know nothing more on the subject of Eustace Surget- collateral kindred than what I have stated in answer to interrogatory 3d, except that the residences of the parties therein named are, I believe, about as follows: The legal residences of Mrs. Catherine Shields, Miss Catherine Merrill, Miss Jane Merrill, Francis L. Merrill, Surget Merrill, and Dunbar L. Merrill are, I believe, in the county of Adams and State of Mississippi, although I think Francis L. Merrill and Surget Merrill are

33 away from home at present; Ayes P. Merrill is, I think, in New York city, but whether he has acquired a legal residence there or not I do not know; Ann Maria DeBary resides, I believe, in Antwerpt, Belgium; Alfred V. Davis, Jr., and Miss Lillie Davis have their legal residence, I believe, in the parish of Concordia, State of Louisiana.

Answer to X interrogatory 7th: For convenience, and to save reversing all the matters referred to in this cross-interrogatory, I have stated the sources and nature of my knowledge of the several facts in my answers to the direct interrogatories.

Answer to X interrogatory 8th: I have obeyed this injunction as far as possible.

(Signed) T. OTIS BAKER.

STEPHEN DUNCAN, sworn:

Answer to interrogatory 1st: Stephen Duncan; age, 47 years; residence, New York city.

Answer to interrogatory 2d: I did know Eustace Surget; I have known him since my childhood; I knew both his father and mother; his father was Captain Francis Surget; his mother was Eliza

34 Surget, born Dunbar; both died some time prior to February 1st, 1882; Eustace Surget was twice married, but left no issue by either marriage.

Answer to interrogatory 3d: I know all his brothers and sisters; there were two brothers and three sisters, namely: Francis, Lenox, Catherine, Jane, and Sarah; Catherine was the only one surviving

on February 1st, 1882; Francis had no children; Lenox was never married; Jane left four sons and three daughters, namely: Dunbar, Ayes, and Francis and Surget, Catherine, Annie Maria, and Jennet; Sarah left a son and daughter, Alfred and Lillie.

Answer to interrogatory 4th: Catherine married Gabriel B. Shields; Jane married Ayes P. Merrill; Sarah married Af'd B. Davis.

Answer to interrogatory 5th. Eustace Surget died at Bordeaux, France, on first February, 1882.

Answer to interrogatory 6th. I knew that Eustace Surget had property in New Orleans in 1861; I heard that it had been confiscated during the war; I have no knowledge what fina-ly became of it.

35 Answer to special interrogatory to Stephen Duncan: I knew that Eustace Surget was dangerously ill in December, 1881, when I was in France, and I saw a cablegram here in Natchez on the first February, 1882, announcing his death; this fact was confirmed by subsequent letters to me from friends and relatives abroad.

Answer to interrogatory 8th: I know of nothing that can assist the heirs in the suit referred to.

Answer to cross interrogatory 1st: I am a cotton planter.

Answer to X interrogatory 2d: I was the second cousin of Eustace Surget.

Answer to X interrogatory 3d: I last saw him in Oct., 1879.

Answer to X interrogatory 4th: He was twice married; first to a Mrs. Flower; 2d, to Miss Mary Linton. I do not know when the first marriage was dissolved; the second was dissolved by his death.

Answer to X interrogatory 5th: I heard that he left a last will and testament, but do not know where it is deposited, nor have I ever seen it.

Answer to X interrogatory 6th: The kindred of Eustace Surget is too numerous that I cannot enumerate them, except so far
36 as stated in my answer to interrogatory 3d in direct examination.

Answer to X interrogatory 7th: I know the facts partly from authentic reports, but mainly from my own personal knowledge.

Answer to X interrogatory 8th: I have endeavored to confine myself to such facts as were known to me personally.

S. DUNCAN.

The further taking of testimony in this behalf is adjourned to May 2d, 1883, at 12 noon.

(Signed) FRED. PARSONS,
Com'r La. in Miss.

MAY 3D, 1883, 12 at noon.

GEORGE W. KOONTZ sworn:

Answer to interrogatory 1st: My name is George W. Koontz; my age 31 years; residence, Natchez, Miss.

Answer to interrogatory 3d: I knew Eustace Surget; knew him all my life. I did not know his father and mother; I am informed

that they are both dead. He was married twice; he left no children by either marriage.

Ans. to interrogatory 3d: I never knew his brothers; I knew his sisters; Catherine, Sarah, and Jane were their names; they
37 were all dead on February 1st, 1882, except his sister Catherine. Sarah left surviving her on the first February, 1882, Alfred and Lillie; Jane left surviving her Catherine, Maria, Dunbar, Jennie, Ayres, Surget, and Frank.

Answer to interrogatory 4th: Catherine married Gabrell B. Shields; Sarah married Alfred V. Davis; Jane married Ayres P. Merrill.

Answer to interrogatory 5th: From information I believe him to be dead in the early part of 1882. I believe he was in Bordeaux, France, when I was informed he died.

Answer to interrogatory 6th: Eustace Surget was reported to have had property in New Orleans, La., in 1861; it was said to have been confiscated by the United States Government.

Answer to interrogatory 8th: I can state nothing further in regard to the matter.

Answer to X interrogatary 1st: Bank clerk.

Answer to X interrogatory 2d: I was not related to Eustace Surget.

Answer to X interrogatory 3d: In the fall or winter of 1876.

Answer to X interrogatory 4th: I believe he was married
38 twice; he was first married to Mrs. Flowers; divorced from her; I cannot give the date; afterwards, in fall of 1876, he married a Miss Mary Linton; that marriage was dissolved by his death.

Answer to X interrogatory 5th: I do not know to my own personal knowledge that he left a last will and testament. I have never seen it. I have been informed that he left a last will and testament, however.

Answer to X interrogatory 6th: Unless my answer to chief interrogatory third covers this question, I cannot answer it, as I do not know.

Answer to X interrogatory 7th: I have stated the facts as I knew them, or have stated that my knowledge was assumed from information received.

Answer to X interrogatory 8th: If I have, I have so stated.

(Signed) GEO. W. KOONTZ.

All of which foregoing testimony I reduced to writing myself, and each of said witnesses, after having their testimony read over to them, signed the same in my presence, at the place and on the dates in the caption mentioned. I further certify that said
39 depositions were taken by me on the dates in caption mentioned, between the hours of ten a. m. and 3 p. m. of said days, and that said witnesses were examine- s-parate and apart from each other.

In testimony whereof, I have hereto set my hand and affixed my official seal, this May 3d, A. D. 1883, at Natchez, Miss.

[SEAL.] (Signed) FRED. PARSONS,
Commissioner for Louisiana in Mississippi.

Act of Sale of Robert P. Hunt to E. Surget. Offered in Evidence by Plaintiff. Filed June 14th, 1883.

SHIELDS *vs.* SHIFF. } No. 8102.

UNITED STATES OF AMERICA, *State of Louisiana:*

Be it known that on this eighteenth of the month of April, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States of America the eighty-fourth—

40 Before me, Theodore Guyol, a notary public, duly commissioned and sworn for the parish of Orleans, State of Louisiana, and in presence of the witnesses hereinafter named and undersigned, personally appeared Robert P. Hunt, residing in this city, who declared that he does by these presents grant, bargain, sell, assign, convey, transfer, and deliver, with all legal warranties, unto Eustace Surget, of the city of Natchez, State of Mississippi, here present, accepting, and acknowledging delivery and possession—

1st. A lot of ground, situate in the second district of this city, in the square bounded by Rampart, Basin, Conti, and Bienville streets, and designated as lot No. five of square No. seven, on a plan drawn by the city surveyor on the 12th May, 1819, and deposited in the office of M. De Armas, late notary in this city; the said lot measures thirty-two feet ten inches front on Basin street by one hundred and twenty feet in depth, running through from street to street.

2d. A lot of ground situate in the same square, adjoining the one above described, and measuring, in French measure, thirty-three feet three inches, more or less, front on Rampart street, a like front on Basin street, and one hundred and twenty feet in depth,

41 running through from street to street.

3d. A lot of ground situate in the same square, designated by the No. seven on the above-mentioned place, and having, in French measure, thirty-one feet front on each of Rampart and Basin streets, by a depth of one hundred and twenty feet, running through from street to street.

4th. And a lot of ground situate in the same square, designated by the No. six on the above-mentioned plan, and measuring thirty-one feet front on each of Rampart and Basin streets, by a depth of one hundred and twenty feet, running through from street to street, all French measure.

5th. Together with the buildings and improvements on the said lots of ground, and all the rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining.

The property firstly and secondly described was purchased by the

said Hunt from Robert J. Ward, by an act passed before P. O. Stark, notary in this city, on the 19th January, 1857; and that thirdly and fourthly described was purchased by him from John Edgerton,
42 by act passed before T. Layton, notary, on the 30th day of November, 1855.

To have and to hold the said described property unto the said purchaser, his heirs and assigns, forever. And the said vendor does hereby cede and transfer unto the said purchaser all the rights and actions of warranty to which he himself is or may be entitled against all the former owners or proprietors of the property herein conveyed, subrogating the said purchaser to the said rights and actions, to be by him enjoyed and exercised in the same manner as they might have been left by the said vendor.

This sale is made and accepted for and in consideration of the price and sum of sixty thousand dollars and interest, payable as hereinafter set forth, in deduction of which the said purchaser has paid the sum of ten thousand one hundred dollars in ready money to the said vendor, who acknowledges the receipt thereof and grants acquittance for the same.

And in further deduction of said price the said purchaser has given and furnished his two several promissory notes for the sum of five thousand dollars each, drawn to the order of and endorsed by himself, dated this day, bearing interest at the rate of eight
43 per cent. per annum from date until paid, and made payable on the first day of October, eighteen hundred and sixty, which notes, after having been paraphed by me, notary, identify them with this act, were delivered to the said vendor, who acknowledged the receipt thereof.

And in order to secure the full and final payment of the said note in capital and interest the property above described remains specially mortgaged and hypothecated in favor of the said vendor, and in favor of any other holder or holders of said notes, the said purchaser promising and binding himself not to sell, alienate, or encumber the said property to the prejudice of this act.

And, in final settlement and liquidation of said price, the said purchaser does hereby assume and bind himself to pay and take up at maturity, in place and stead of said vendor, and to his entire acquittance, the following-described promissory notes, secured by mortgage on the above-described property as hereinafter set forth, to wit:

1st. Two promissory notes drawn by the said Hunt to the order of and endorsed by himself, dated on the first day of December, eighteen hundred and fifty-five, one for the sum of fifteen
44 thousand dollars, payable five years after date, and the other for the sum of nine hundred dollars, payable on the first day of December, eighteen hundred and sixty, which said notes were given by the said Hunt in part payment for the property thirdly and fourthly above described, and are secured by mortgage thereon in favor of John Edgerton, his vendor, by act passed before Thomas Layton, notary, on the 30th November, 1855.

2d. And six several promissory notes, also drawn by the said Hunt to the order of and endorsed by himself, dated on the twenty-eight- day of January last, bearing interest at the rate of eight per cent. per annum from maturity until paid, and made payable at the Bank of Louisiana, in this city, as follows: Four for the sum of five thousand dollars each, payable two on the fifteenth and two on the twentieth of January, eighteen hundred and sixty-two; and two for the sum of two thousand dollars each, payable on the twenty-fifth day of the same month and year, which notes are secured by mortgage on the whole of said described property in favor of Edward Shiff by an act passed in this office on the 28th day of January last.

45 Which said two mortgages are hereby assumed by the said purchaser to the extent of the notes above described, binding himself to fulfil and comply with all the conditions and clauses therein contained, and particularly with the obligation taken by the said Hunt, to keep the buildings on the said property constantly insured against loss by fire to an amount not less than twenty thousand dollars, and to transfer the policies of insurance unto the said Shiff until the full and final payment of the six notes lastly above described and secured by mortgage in his favor as hereinafter stated.

All taxes due on the said property have been paid, according to the proper receipts exhibited to me, notary, and it is free from encumbrances, as appears from the annexed certificate of the recorder of mortgages, with the exception, first, of the mortgage granted by the said Hunt by act passed before T. Layton, notary, dated 30th November, 1855, in favor of John Edgerton, to secure the payment of twenty-eight thousand dollars of capital and four thousand five hundred dollars of interest; which mortgage is now reduced by payment of thirteen thousand dollars on said capital and eighteen hundred dollars on said interest.

46 2d. And of the mortgage granted by the said Hunt in favor of Edward Shiff by act passed in this office on the 28th day of January last to secure the payment of the twenty thousand dollars interest and costs.

And now to these presents came and intervened Samuel L. Moss, of this city, who declared that he had received from the said Robert P. Hunt full payment of two several promissory notes, which have been exhibited to me, notary, duly cancelled, both drawn and endorsed by him, the said Hunt, for the sum of nine hundred dollars each, dated on the first day of December, eighteen hundred and fifty-five, bearing interest at the rate of eight per cent. per annum from maturity until paid, and made payable on the first day of December, 1858, and first of December, 1859, and both secured by mortgage in favor of John Edgerton, as above set forth.

In consideration of which payment the said intervenor does hereby grant a full release and discharge of the mortgage securing the same, fully authorizing and empowering the recorder of mortgages for this city to erase the same from his records.

47 *Affidavit Annexed to Act of Sale.*

And now to these presents personally came and appeared Madam Sallie Ward, of lawful age, wife of the said Hunt, who, after having taken cognizance of the foregoing act, which I, the said notary, carefully read and explained to her, declared and said that she approve and ratify the same, and that it is her wish and intention to release in favor of the said purchaser the property herein described from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges to which she may be entitled, whether by virtue of her marriage with her said husband, or otherwise.

Whereupon I, the said notary, did inform the said lady, apart and out of the presence and hearing of her husband, that by the laws of this State the wife has a legal mortgage on the property of her husband, first, for the restitution of her dowry, and for the reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage; secondly, for the restitution and reinvestment of the dotal

48 property by her acquired since marriage, whether by succession or donation, from the day the succession was opened or the donation perfected; thirdly, for nuptial presents; fourthly, for debts by her contracted with her husband; and fifthly, for the amount of her paraphernal property alienated by her, and received by her husband, or otherwise disposed of for his individual interest. That in making her intended renunciation she would deprive herself irrevocably and forever of all rights of reclamation against the property herein described, whether under mortgage privilege or otherwise.

And the said lady did thereupon declare unto me, notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by law on the property of her said husband, and that she, nevertheless, did persist in her intention of renouncing, and does formally renounce, not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others, of any nature or kind whatever, to which she is or may be entitled by any laws now or heretofore in force in the State of Louisiana.

49 And the said Robert P. Hunt, being now present, aiding and authorizing the said Mrs. Hunt in the execution of these presents, she, the said lady, did again declare that she did and does hereby make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal, and other rights, claims, and privileges, in favor of the said purchaser, binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

Thus done and passed in my office, the day, month, and year first above written, in the presence of William G. Latham and Paul Abat, witnesses of lawful age, domiciliated in this city, who here-

unto sign their names with the parties, and me, the said notary, after the reading the whole.

(Signed) SALLIE WARD HUNT.
R. P. HUNT.
E. SURGET.
L. MOSS.

W. G. LATHAM.
P. ABAT.

THEO. GUYOL, *N. P.*

The foregoing is a true copy of the original act extant in the registers of Theodore Guyol, late notary public, which are in my possession and custody as his successor in office.

(Signed) FELIX McCULLOCH,
Not. Pub.

New Orleans, April 10th, 1865.

50 *Certificate of Recordation Annexed to Act of Sale & Offered in Evidence by Plaintiffs.*

I, register of conveyances, certify that the foregoing act has been recorded in my office on the 20th April, 1860, in book No. 84, folio 119.

(Signed) FELIX McCULLOCH,
Register.

New Orleans, April 13, 1865.

Act of Mortgage. R. P. Hunt to Edward Shiff. Offered in Evidence by Plaintiff & Filed June 14th, 1883.

SHIELDS *vs.* SHIFF. } No. 8102. Division "A."

UNITED STATES OF AMERICA, *State of Louisiana:*

Be it known that on this twenty-eighth day of the month of January, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the United States of America the eighty-fourth, before me, Theodore Guyol, a notary public, duly commissioned and sworn for the parish of Orleans, State of Louisiana, and in the presence of the witnesses hereinafter named and un-
51 dersigned, personally appeared Robert P. Hunt, residing in this city, who declared and acknowledged that he is truly and justly indebted unto Edward Shiff, also of this city, in the full sum of twenty-four thousand dollars, for which he has given and furnished his six several promissory notes drawn to the order of and endorsed by himself, dated this day, bearing interest at the rate of eight per cent. per annum from maturity until paid, and made payable respectively, as follows, at the Bank of Louisiana, in this city, to wit, four for the sum of five thousand dollars each, payable, two on the fifteenth, and two on the twentieth of January, eighteen hun-

dred and sixty-two, and two for the sum of two thousand dollars each, payable on the twenty-fifth day of the same month and year, all which notes, after being paraphed by me, notary, to identify them with this act, were delivered to the said Shiff, who acknowledges the receipt thereof.

And in case it shall become necessary to institute legal proceedings for the recovery of the amount of the said notes or of any part thereof the said Robert P. Hunt binds himself to pay the fees of the attorney-at-law who may be employed for that purpose, which fees are hereby fixed at five per cent. on the amount sued for.

52 Now, therefore, in order to secure the punctual payment of said notes at maturity, with all eventual interest and attorney's fees, the said Rob't P. Hunt declared that he does by these presents mortgage, affect, and specially hypothecate, in favor of the said Edward Shiff, and to secure to the use and benefit of any and all future holder or holders of the said notes, the said Edward Shiff being here present and accepting, 1st, two lots of ground, with the buildings and improvements thereon, situate in the second district of this city, in the square bounded by Rampart, Basin, Bienville, and Conti streets, and designated by the number seven and six on a plan drawn by Jh. Pelie on the 11th of May, eighteen hundred and nineteen, and deposited in the office of Michel de Armas, then notary, in this city, by act of the sixteenth day of June of the same year, said lots having each in French measure thirty-one feet front on each of Rampart and Basin streets, by a depth of one hundred and twenty feet, and being the same property purchased by the said Hunt from John Egerton by an act passed before Thomas Layton, notary, on the thirtieth day of November, 1855.

53 2d. An- another lot of ground, with the improvements thereon, situate in the same square, designated by the No. eleven on the said plan, and having thirty-two feet four inches front on each of said Rampart and Basin streets, by one hundred and twenty feet in depth.

3d. An- another lot of ground, with the improvements thereon, situate in the same square, adjoining the lot last described, and having in French measure thirty-three feet three inches, more or less, in front on each of said Rampart and Basin streets by one hundred and twenty feet in depth, which said two lots secondly and thirdly described were purchased by the said Hunt from Robert J. Ward by an act passed before T. O. Starke, notary, on the nineteenth day of January, 1857.

He, the said Hunt, promissing and binding himself not to sell, alienate, or encumber the said described property to the prejudice *at* this act.

According to the annexed certificate of the recorder of mortgages for this city there is no other mortgage in the name of the said Hunt, and recorded against the said described property than the following, to wit: The one he granted by act passed before Thomas Layton, notary, dated the thirtieth day of November, 1855,

54 as lots Nos. six and seven, to secure the payment of twenty-eight thousand dollars capital and four thousand five hun-

dred dollars interest, which mortgage has been reduced by payment of thirteen thousand dollars on said capital and of eighteen hundred dollars on said interest.

And the said Hunt here declared that the said mortgage is now reduced by the further payment of two notes for nine hundred dollars each, due on the first December, 1858, and first of December, 1859, which have been exhibited to the said mortgagee, duly cancelled and defaced.

And the said mortgagor moreover binds himself to keep the buildings on the said property constantly insured against loss by fire to an amount not less than twenty thousand dollars, and to transfer the policies of insurance to the said mortgagee, until the full and final payment of the said notes, hereby consenting and agreeing that the said mortgagee shall have the right to transfer such policies to any future holder or holders of the said notes, and that in case of failure of said mortgagor to effect such insurance the holder or holders of the said notes shall have the right to do so, and the reimbursement of all sums paid for that purpose
55 shall be secured by the present mortgage; but this clause shall not be construed as obligatory on such holder or holders, or as making them liable for any loss, damage, or injury which may result from the non-insurance of the said buildings.

And now to these presents personally came and appeared Madam Sallie Ward, of lawful age, wife of the said R. P. Hunt, who, after having taken cognizance of the foregoing act, which I, the said notary, carefully read and explained to her, declared and said that she approves and ratifies the same; and further, that it is her wish and intention to release in favor of the said mortgagee the property herein described from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges to which she may be entitled, whether by virtue of her marriage with her said husband, or otherwise.

Whereupon I, the said notary, did inform the said lady, apart and out of the presence and hearing of her said husband, that she had by law a legal mortgage upon the property of her said husband, first, for the restitution of her dowery and for the reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the
56 marriage; secondly, for the restitution and reinvestment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened or the donation perfected; thirdly, for nuptial presents; fourthly, for debts by her contracted with her said husband; and, fifthly, for the amount of her paraphernal property alienated by her and received by her said husband, or otherwise disposed of, for the individual interest of her said husband; that in making her intended renunciation she would deprive herself irrevocably and forever of all rights of reclamation against the property herein described, whether under mortgage, privilege, or otherwise.

And the said lady did thereupon declare unto me, notary, that she was fully aware of, and acquainted with, the nature and extent

of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by law on the property of her said husband, and that she, nevertheless, did persist in her intention of renouncing not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others of any kind or nature whatever to which she may be entitled by any laws now or heretofore in force in the State of Louisiana.

57 And the said Robert P. Hunt being now present, aiding, authorizing the said Mrs. Hunt in the execution of these presents, she, the said lady, did again declare that she did and does hereby make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal, and other right, claims, and privileges in favor of the said mortgagee, binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

Done and passed, at New Orleans, in my office, the day, month, and year aforesaid, in the presence of William G. Latham and Paul Abat, witnesses, who have signed with the appearers and me, notary, after reading the whole.

(Signed) R. P. HUNT.
SALLIE WARD HUNT.
ED. SHIFF.

W. G. LATHAM.
PAUL ABAT.

THEO. GUYOL, *N. P.*

The foregoing is a true copy of the original act extant in the registers of Theodore Guyol, late notary public, which are in my possession and custody as his successor in office.

New Orleans, April 8th, 1865.

(Signed) FELIX McCULLOCH,
Not. Pub.

58 *Certificate of Mortgages.*

OFFICE OF MORTGAGES.

I, the undersigned, recorder of mortgages for the parish of Orleans, city of New Orleans, State of Louisiana, certify the foregoing act of mortgage has been duly recorded in my office under date of the 30th of January, 1860, in B. 74, f. 512.

New Orleans, April 15, 1865.

(Signed) J. W. MURDEN,
Recorder.

Expense Account. Offered in Evidence by Plaintiff. Filed June 14th, 1883.

SHIELDS *vs.* SHIFF. } No. 8102.

House No. 71 Rampart St. (Arthur Shiff).

Expenses 1882:

1882, May 10.	Paid city taxes 1882		$571 50
" June 24.	Paid ins. premium one year to March 3d, 1883		44 42
" Sept. 22.	Paid L. Hein, repairs		43 15
" Dec. 15.	" " " "		57 35
" " 19.	" State taxes 1882		108 00
			$824 42

Expenses 1883 (to this date):

1883.			
April 14th.	Paid L. Hein, repairs		
May 29.	Ins. prem. 1 year to M'ch 3, '84	$44 42	52 42
			$826 84

59 House No. 71 Rampart street.

Receipt in 1882 and 1883. (Rent at $150 p. month.)

Say from 1st Feb'y, '82, to May 31, '83, 16 months, at $150	$2,400
Less commissions at 5 per cent.	120
	$2,280

Certificate of the Recorder of Mortgages. Offered in Evidence by Plaintiff. Filed June 14th, 1883.

SHIELDS *vs.* SHIFF. } No. 8102.

EUGENE MAY,
Recorder of Mortgages for the Parish of Orleans,
Office corner Royal and Conti Streets.

I, the undersigned, recorder of mortgages in and for the parish of Orleans, do hereby certify that the mortgage granted by R. P. Hunt to Edward Shiff by act before Theodore Guyol, on the 20th January, 1860, in book 74, fo. 512, and recorded in this office on the 2d day of April, 1879, in book 176, fo. 133, does not appear from the books of this office to have been reinscribed between said
60 dates of inscription and re-recording.

(Signed) GEO. GUINDUET.

Insurance Bill. Offered in Evidence by Defendant. Filed June 14th, 1883

SHIELDS
vs.
SHIFF. } No. 8102.

Folio 4278. Ar. Denis.

Arthur Shiff to New Orleans Insurance Company.
Established in 1805.
Corner Camp and Canal Streets.

For premiums during March 8th, 1882:

Under special fire policy No. 63001, build'g		$52 25
No. —		
No. —		
No. —		
Open fire policy No. —		
" marine " No. —		
Special " " No. —		
Open river " No. —		
Special do. do., No. —		
Bill rendered		52 25
15 per cent. rebate		7 83
		$44 42

[Endorsed across the face:] (811.) Please draw your check to the order of the company. Policy 63001.

Insurance No. 71. Rampart, one year to March 8, '83, $10,450 @ ½, $42.25.

New Orleans, June 24th, 1882.
Received payment,
For the Co., (Signed) THOS. S. PORTER.

61 *Insurance Bill.. Offered in Evidence by Defendant. Filed June 14th*, 1883.

SHIELDS
vs.
SHIFF. } No. 8102.

Folio 4278. Ar. Denis.

Mr. Arthur Shiff to New Orleans Insurance Company.
Removed to No. 3 Carondelet Street.
Established in 1805.

To premiums during March 8th, 1883:

Under special fire policy No. 63001, buid'g		$52 25
No. —		
No. —		
No. —		
No. —		

Open fire policy, No. —
Open marine, No. —
Special, No. —
Open river, No. —
Special, No. —

Bill rendered	52 25
15 per cent. rebate	7 83
	$44 42

[Endorsed across the face:] Please draw your check to the order of the company.

New Orleans, May 29th, 1883.
Received payment.
(Signed) JOS. A. HINCKS,
Act. Secretary.

62 *City Tax Receipt of* 1882, *offered in Evidence by Defendant. Filed June 14th,* 1883.

SHIELDS *vs.* SHIFF. } No. 8102.

City of New Orleans, tax of 1882. No. 1787.

Received, May 10, 1882, of Arthur Shiff five hundred and seventy-one & $\frac{50}{100}$ dollars for tax, as described below:

Real estate	18,000 00
Horses, cows, and carriages	
Stocks in vessels and corporations	
Money at interest, mdse., or stock in trade	
Furniture, etc.	
Income	
Total taxable property	$18,000 00

(Signed) E. E. O'BRIEN,
For Administrator of Public Accounts.

For what purpose.	Amount.
City expenditures, police, and schools, 10 mills	
Interest and redemption public debt, 5 "	
Special judgment tax levied by order of the United States circuit court and ordinance No. 7532, 16¾ mills	
Total rate of tax, 3.17½ per cent.	571 50

(Signed) JNO. J. KULMER,
For Administrator of Finance.

63 *Description of Real Estate.*

Ass'm't District.	No. of Square.	Where Situated.	
		The streets between which the property lies are here given, the first named being that on which it fronts. When one or more streets are underscored corner property facing these streets is denoted.	
6	122	Ramp't, Basin, Conti, B'ville to 4, 5, 6, 7, & 128	18,000 00

State Tax Receipt for 1882, *offered in Evidence by Defendant. Filed June 14th,* 1883.

SHIELDS *vs.* SHIFF. } No. 8102. Division "A."

STATE OF LOUISIANA, *Parish of Orleans:*

No. 2508 for 258. State taxes for 1882.

NEW ORLEANS, *Dec. 19th,* 1882.

Received from M. Arthur Shiff one hundred and eight $\frac{00}{100}$ dollars, amount of State taxes for the year 1882 on the property, etc., described on the reverse hereof in accordance with law.

$108.00.
Notice, —.
Suit, —.
$108.00.

(Signed) P. L. BONNY,
Pp. THORENO.

64 *Sheriff's Deed of Sale to Arthur Shiff, offered in Evidence by Defendant. Filed June 14th,* 1883.

SHIELDS *vs.* SHIFF. } No. 8102. Division "A."

Whereas I, Thomas Duffy, civil sheriff of the parish of Orleans, by virtue of a writ of seizure and sale to J. R. Alcée Gauthreaux, late sheriff, and to me transferred, directed by the honorable the fifth district court for the parish of Orleans, in the suit of Arthur Shiff *vs.* Eustace Surget, in suit No. 10780 of the docket of said court, after having fulfilled and complied with all the previous legal requisites, did seize the following described property, to wit: 1st. Two lots of ground, with the buildings and improvements thereon, situated in the second district of this city, in square bounded by Rampart, Basin, Bienville, and Conti streets, and designated by the numbers seven and six on a plan drawn by J. H. Pilié on the eleventh of May, 1819, and deposited in the office of Michel de Armas, then

notary in this city, by act of the sixteenth day of June, 1819, said two lots having each in French measure thirty-one feet front
65 on each of Rampart and Basin streets by a depth of one hundred and twenty feet.

2d. Another lot of ground, with the improvements thereon, situated in the same square, designated by the number eleven on the said plan, and having thirty-two feet four inches front on each of said Rampart and Basin streets by one hundred and twenty feet in depth.

3d. And another lot of ground, with the improvements thereon, situated in the same square, adjoining the lot last described, and having in French measure thirty-three feet three inches, more or less, in front on each of said Rampart and Basin streets by one hundred and twenty feet in depth.

And after having given due legal notice to the said defendant of the said seizure in the manner pointed out by law, did advertise the said before described property for sale after the expiration of the legal delay from the time of said notice, to wit, on the third day of July, 1880, by advertisements composed in English and French, announcing the sale to take place at the Merchants' and Auctioneers' Exchange, on Royal street, between Canal and Custom-House streets, in the second district of this city, on the third day of August, 1880, at 12 o'clock m. Said advertisements were inserted and
66 published in English and French in two papers in the city of New Orleans, to wit, in New Orleans Daily Democrat in English and New Orleans Bee in French, from the said third day of July, 1880, to the day of sale, being full thirty days from the date of the first notice given in the said newspapers. Said advertisements were inserted and published in said newspapers on the 3, 10, 17, 24, & 31st of July and the 3d of August, 1880.

And having further complied with and performed all the additional previous legal requisites, said property having been duly appraised, did expose the same at public sale, according to law, at the said Merchants and Auctioneers' Exchange, on the said third day of August, eighteen hundred and eighty, at 12 o'clock m., and at the same time and place of sale I did announce, in a loud and audible voice, the terms and conditions of sale hereinafter expressed and specified, and did read verbatim, and in a loud and audible voice, the certificate of the recorder of mortgages for the parish of Orleans and the city of New Orleans, delivered on the day of sale, and by which certificate it appears that there are no other
67 mortgages standing in the name of defendant, and recorded against said before-described property than the following, to wit:

The drawing privilege on 1st property.
The drawing privilege " 2d "
The drawing " " 3d "

B'k 75, f. 224, rec. 20 April, '60. The reversion he took per act before T. Guyol, notary, dated 18 April, 1860, up to $39,900.00, and costs, &c., now reduced to $24,000.00, int's, costs, &c., of.

B'k 74, f. 512, rec. 30 Jan., '60. The mortgage granted by R. P.

Hunt in favor of Edward Shiff, per act before T. Guyol, notary, dated 28th January, 1860, to secure $24,000, int., costs, &c.

B'k 171, f. 692, rec. 2 April, '79. The mortgage be granted in favor of his vender, Robert P. Hunt, per act before Theo. Guyol, notary, dated 18th April, 1860, to secure $10,000, int., costs, &c., and by same act the reversion he took up to the sum of $39,900, int., costs, &c., of the mortgage granted by said R. P. Hunt, and recorded in b'k 74, f. 512, as aforesaid.

B. 143, f. 139, rec. 8th June, '75. One m't'ge, city taxes, 1862, $100.00.

B. 143, f. 139, rec. 8 June, '75. One m't'ge, city taxes, 1862, $460.00.

B. 164, f. 103, rec. 15 Mar., '77. —— 1864, $6.25.

No. 10780.

B'k —, record. on 30 June, 1880. The one in favor of Arthur Shiff resulting from a writ issued by the 5th district court on
68 the 29th June, 1880, for the sum of $20,000 and 00 cents, with interest stipulated on said writ, and costs of suit against said property, subject to a credit of $16,109.35⅔.

And at the time and place of sale I did read verbatim, and in a loud and audible voice, the certificate of the register of conveyances in and for the parish of Orleans, State of Louisiana, delivered on the day of sale, and by which certificate it does not appear that said defendant attended said before-described property acquired April 18, 1860, reg. in b'k 84, fo. 119, except the sale made by him to Arthur Shiff, by act before T. O. Stark, N. P., July 18th, 1866, reg. in b'k 89, fo. 672.

When Arthur Denis being the highest and last bidder for account of Arthur Shiff, the said property was adjudicated to the said Arthur Denis for account of the said Arthur Shiff for the price and sum of nineteen thousand dollars ($19,000), payable cash, and which was settled for as follows:

1st. The purchaser paid in cash the costs and charges of the above-entitled suit, amounting in all to six hundred and twenty-five dollars and twenty cents	$625 20
2d. And the said purchaser, being the plaintiff in
69 the above-entitled cause, and as such holder of the mortgage the first in rank under which this sale was made, has retained in his hands on account of his claim and of said mortgage the balance of the price of adjudication, amounting to eighteen thousand three hundred and seventy-four dollars and eighty cents	$18,374 80
Total amount of sale	$19,000 00

Now, therefore, know all men by these presents, that I, the said civil sheriff, in consideration of the premises, and by virtue of the laws of the State of Louisiana in such cases made and provided, do sell and transfer the said before described property to the said Ar-

thur Shiff, and all the right and title which the said defendant had in or to the said before-described property, to have and to hold the same to the said Arthur Shiff, his heirs and assigns, forever.

In witness whereof, I have hereunto signed my name, at New Orleans, in the State of Louisiana, this thirtyeth day August, in the year one thousand eight hundred and eighty, and the 105th year of the Independence of the United States of America.

(Signed) For THOMAS DUFFY,

70 *Civil Sheriff of the Parish of Orleans.*

WM. WALSH,

D'y Sheriff.

Signed in the presence of the following competent witnesses:

ERNEST RICKER.

JNO. S. GARREY.

Registered in the conveyance office, book 112, folio 718, & duly stamped.

New Orleans, August 30, 1880.

(Signed) L. ARNAULT. *R. C.*

Recorded, New Orleans, August 31st, 1880, in deed book No. one, folio- 88, 89, 90, & 91, of the civil district court for the parish of Orleans.

(Signed) H. MIESTER, *D'y Clerk.*

Order Case Submitted.

Extract from Minutes.

CATHERINE SHIELDS, Widow, &c., *et al.* *vs.* ARTHUR SHIFF. } No. 8102. Division "A."

This case came on for trial this day; present, Col. Gus. A. Breaux for plaintiff, and T. Gilmore, Esq., for defendant; when, after hearing evidence, counsel, and pleadings, the case was submitted and taken under advisement.

71 *Reasons for Judgment. Filed January 2d,* 1884.

Civil Dist. Court.

CATHERINE SHIELDS, Widow, &c., *et al.* *vs.* ARTHUR SHIFF. } No. 8102. Division "A."

On the 28th of January, 1860, by an act before Theo. Guyol, notary public, Robert P. Hunt, then being the owner of the property involved in this controversy, mortgaged it to Edward Shiff to secure six promissory notes, four of $5,000 each, and two of $2,000 each, aggregating $24,000.

On the 18th of April following, Hunt sold this property to Eustace Surget by an act before the same notary, and Surget, the purchaser, assumed to pay as part of the price the said mortgage for $24,000.

At the instance and pursuit of the Government of the United States in the case of the United States *vs.* Thirteen Lots of Ground, the property of Eustace Surget, filed January 24th, 1865, being No. 7978 of the docket of the district court of the United States for the district of Louisiana, instituted under and by virtue of the act of Congress of July 17th, 1862, "to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels,
72 and for other purposes," and the resolution of same date, explanatory thereof, reading as follows:

"Resolved, etc., That the provisions of third clause of the fifth section of an act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes, shall be construed as not to apply, * * * nor shall any punishment or proceedings under said act be so construed as to work a forfeiture of the real estate of the offender beyond his natural life." Statutes at Large, ed. 1865, p. 427, resolutions; act of July 17, 1862, same ed., p. 589.

A warrant issued, in obedience to which, as appears from the returns made Feb'y 14, 1865, the marshal seize- and took possession of the property described in the libel, and which comprised the property in question herein.

On the 2d of May, 1865, a decree of condemnation of said property was entered, and said property was ordered to be sold at public auction.

On the 10th of April, 1865, a writ of *vendition- exponas* was issued by the said honorable court, and thereunder, on the 17th day of May, 1865, the lots and improvements on Rampart
73 street, revindicated herein, after due proceedings were sold to Arthur Shiff, the defendant in this suit, for $22,000.

On the 30th of May, 1865, on the intervention of said Arthur Shiff, the proceeds of said sale were distributed by decree of the court, and he received under his mortgage from said purchase price said proceeds less costs and taxes due.

Since said marshal's sale and up to the present time said Arthur Shiff has been in possession of that property.

The 5th and 6th sections of the act above referred to, under which the proceedings adverted to hereinabove were had, made it the duty of the President of the United States to cause the seizure of all the estate, and property, money, stocks, credits, and effects of the persons named in the said act.

And the 7th section directed the condemnation and sale of such property, and the mode of proceeding to effect the same.

See Statutes at Large, vol. 12, p. 589, joint resolution. *Id.*, p. 627.

Under this legislation all the estate of the offender was to be seized and sold after due proceedings, so that it might be made available for the purpose of the act. This was done, as we have seen above, in relation to Eustace Surget.

74 The first inquiry that naturally arises here is, what estate or property had said Eustace Surget in the lots of ground

and improvements described in the petition herein at the time of the seizure and condemnation pronounced by the United States court of Louisiana aforenamed? For it is evident that no other interest, estate, or property could be acquired by any one, and that no subsequent event could enlarge the title acquired. We have seen that the property had come into Surget's hands burdened with the mortgage of the 28th of January, 1860, and subject to the mortgage and vendor's privivilege resulting from the act of purchase.

The right of the mortgage and privileged creditor was a *jus in re*, a right in the property. Civil Code, art. 3282; Troplong Priv. et Hypoth., vol. 2, No. 386. It was in no manner displaced or divested by the confiscation proceedings. It continued to subsist in Edward Shiff, or in the holders of the notes, in the same manner as if no such condemnation under confiscation proceedings had taken place. So it was held by the honorable the Supreme Court of the United States in Day *vs.* Micou, 18 Wall., 162, affirming the decree of our honorable Supreme Court in 26 A., p. 18. There the highest tribunal of the land said: If, then, as we hold, the property and
75 estate of J. P. Benjamin was all that was seized, or all that could be seized and condemned in this confiscation proceedings; those who held other interests in the land were not bound to come in and assert their claims; their interest did not pass to the purchaser at the sale, and they remain unaffected by the decree of condemnation and sale thereunder.

We find the same doctrine repeated by the honorable the Supreme Court of the United States in the claims of Marcuard *et al.*, 20 Wall., 115.

There that honorable court said: The parties now before us complain that they were not allowed to take the proceeds of the sales. But they ought not to have been allowed to intervene. They had no interest even; they were lien-holders in the confiscation proceedings. It was only the right of John Slidell, whatever that right was, that could be condemned and sold, and the sale under the judgment of condemnation in no degree disturbed their liens. By the decree of condemnation the United States succeeded to the position of Slidell, and the sale had no other purpose or effect than to make the thing confiscated available for the uses designated
76 by the confiscation act. This was decided in Bigelow *vs.* Forrest, 9 Wallace, 339, and more recently in Day *vs.* Micou, 18 Wall., 156.

In the recent case of Avegno *vs.* Schmidt & Zeigler, our present supreme court said: "A correct interpretation of the act of Congress of July 17, 1882, entitled an act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes, as explained by a resolution adopted by that body on the same day, explanatory of said confiscation act, irresistibly leads to the conclusion that all that can be sold by virtue of a decree of condemnation and order of sale under the act was a right to the property seized terminating with the life of the person for whose offense it had been seized. Bigelow *vs.* Forrest, 9 Wall., 339. Since it was held in that case that although the claim-

ant under his father was himself liable to confiscation under the act, as an officer of the Confederate army, such circumstance was no bar to his recovery. As a corollary from the main proposition it follows logically that the rights of other parties in the condemned property could not, in the least, be affected by the confiscation proceedings against the offender, and that a sale made under
77 such proceedings could not impair rights of mortgage in favor of third persons in the condemned property.

In the case of Day *vs.* Micou, 18 Wall., 160, this question was directly involved in the controversy, and the Supreme Court of the United States equivocally adopted this interpretation, and speaking of mortgage rights, *bona fide*, acquired by third persons on the offender's property, previously to his offense, the court said their interest did not pass to the purchaser at the sale, and they remain unaffected by the decree of condemnation and sale thereunder.

In the case [of] Waples *vs.* Hays, Monition's Transcript, vol. 5, p. 73, speaking of the rights of the mortgagee, the court said: As his lien was not condemned his rights under it would have been superior to the title acquired by Waples.

After a careful examination and a patient study of the jurisprudence, as established by the decisions of the Supreme Court of the United States, we reach the conclusion that a sale of immovable property under confiscation proceedings, in accordance with the act of Congress, has no more the effect of impairing the rights of mortgage of third persons than an expropriation by private act or judicial process would under our laws. Hence it follows that,
78 admitting the perfect legality and binding force and effect of the confiscation proceedings against Bernard Avegno, and that he had thereby been completely divested of title to the fee, as fully as could have been accomplished by a sheriff's sale, under our practice the mortgage rights of Morgan were not in the least affected by the divestiture of title, and continued to attach to the property, either in the hands of the United States or of the purchaser under the proceedings, or in the indefinite ownership of the fee, vested under the act in the presumption liens of Avegno. * * * Morgan's rights having been unaffected by the confiscation proceedings, and his act of mortgage containing the clause or fact *de non alienando*, he was authorized to proceed in foreclosing his mortgage against Avegno, his mortgagor, in the same manner as though no divestition of the latter's title and ownership had occurred. This rule is elementary in our practice, and at this stage of our jurisprudence need not be supported by authority.

I conclude, that on the authority of the above cases, I must hold with the defendant, that the interest of the defendant as holder of the mortgage aforementioned was not disturbed or displaced by
79 the confiscation proceedings; that only the interest which Eustace Surget had at the time was condemned, and nothing more was acquired by the United States or plaintiffs, or any one else. The proceedings in confiscation and forfeiture were limited to the purposes of the act, and must be strictly construed. It cannot be conceived how the circumstances that the defendant became the

adjudicatee of the life estate at the confiscation sale, and received a portion of the price on account of his mortgage, could make any change in the relation in which he stood to the property as holder of a mortgage for the balance. The mortgage undoubtedly extended to the fee the entire property, and covered all its subdivisions. I therefore believe that I can safely assert that the defendant had the right to foreclose, as he has done, the mortgage against Surget, the mortgagor.

But it is claimed that these proceedings were based upon paper long years prescribed, and to enforce a mortgage lapsed for many years for new reinscription, and therefore plaintiffs can treat these proceedings as null.

I think not. Like the mortgage in the case of Avegno *vs.* Schmidt, Shiff's mortgage contained the fact *de non alienando.* As we
80 have seen above the confiscation proceedings did not disturb the contractual relations existing between Surget and Shiff. And as long as the debt was not prescribed, or, if prescribed, and the debtor did not plead it, the foreclosure was in time.

Besides all this plaintiffs claim the property herein as sole heirs of blood of the late Eustace Surget. Now, I am not aware of any decision intimating that heirs of the blood are entitled to succeed to the estate of the offender in preference to heirs instituted by testament. The purpose of the act was not, and it seems not, to regulate the order of descent or succession. I did not forfeit the offenders' testamentary capacity.

That plaintiffs are Surget's nearest collateral relatives is fully proven, but they do not seem to me to be his heirs, even as to the specific property which they claim herein.

It appears that Eustace Surget left a will instituting as heir his wife, thereby excluding his collateral relatives; this he seems to have had the right to do.

This right was never forfeited or taken away, and no one can claim to succeed to him, except that instituted heir.

For the reasons above stated judgment should be entered
81 herein against plaintiffs and in favor of defendant as prayed for. And it is so ordered.

Judgment. Rendered January 2d, 1884.

CATHERINE SHIELDS, Widow, etc., & *als.* *vs.* ARTHUR SHIFF. } No. 8102. Division "A."

For the reasons assigned in the written opinion of the court this day delivered and on file, it is ordered, adjudged, and decreed that there be judgment in favor of defendant, Arthur Shiff, and against plaintiffs, dismissing the said plaintiffs' demand at their costs, and further decreeing the said Arthur Shiff to be the owner of the property described in plaintiffs' demand and purchased by said defendant at sheriff's sale on the 3rd day of August, 1880, in the suit

No. 10780 of the late fifth district court for the parish of Orleans, entitled Arthur Shiff *vs.* Eustace Surget.

Judgment rendered January 2, 1884.

Judgment signed January 11th, 1884.

(Signed) A. L. TISSOT, *Judge.*

82 *Motion for a New Trial. Filed January 7th,* 1884.

CATHERINE SHIELDS, Widow, & *als.*
vs.
ARTHUR SHIFF. } No. 8102. Division "A."

On motion of Breaux & Hall, of counsel for plaintiffs, and on suggestion to the court that a judgment has been rendered against them in above-entitled cause, and that they believe and are advised that there is error to their prejudice—

It is ordered that defendant do show cause on finding, the 11th instant, at 11 o'clock a. m., why a new trial should not be granted on the following grounds, viz:

1st. That the judgment is contrary to law and the evidence.

2d. That the court is in error in holding that a party can foreclose a lapse mortgage on a prescribed claim against property which had passed into the hands of third persons, the proceedings of foreclosure being directed against the original mortgager.

3d. That the court errs in its construction of the act of Congress of July 17, 1862, being an act to suppress insurrection, &c., and the resolution of Congress explanatory thereof, in holding that
83 that act does not deprive the offender against it of all interest in property confiscated, so that he may not effect the same by will and testament.

4th. In not holding that under the statute of July 17th, 1862, of Congress, that the term "heirs" is a designation merely of the beneficiaries, who necessarily are the heirs of blood only in so far as concerns the property confiscated under the said act and resolution of Congress, and, therefore, that the title and rights claimed in this action rest in the plaintiff.

Rule for New Trial Dismissed.

Extract from the Minutes, January 11, '84.

CATHERINE SHIELDS & *als.*
vs.
ARTHUR SHIFF. } No. 8102. Division "A."

The rule for a new trial herein came on for trial this day.

Present: Col. G. A. Breaux, for plaintiffs and movers, and T. Gilmore, Esq., for defendant, and after hearing counsel for the reasons orally assigned, it is ordered by the court that said rule be discharged at movers' costs.

84 *Motion for Suspensive Appeal.*

Extract from the Minutes of Jan'y 15, '84.

Present: Hon. A. L. Tissot, judge.

CATHERINE SHIELDS *et als.*
vs.
ARTHUR SHIFF. } No. 8102. Division "A."

On motion of Breaux & Hall, counsel for plaintiffs, and on suggesting to the court that a final judgment was rendered herein on the 2d day of January, 1884, and signed on the 11th day of January, 1884, in favor of defendants, and that plaintiffs are advised and believe that they are *agreed* thereby—

It is ordered, adjudged, and decreed that plaintiffs be granted a suspensive appeal to the supreme court of the State of Louisiana, on the first Monday of February next, there not being time enough to make out transcript before next return day, according to law, on plaintiffs' furnishing bond, with good and solvent surety, in the sum of one hundred dollars, conditioned as the law directs.

Bond of Appeal. Filed January 15, 1884.

CATHERINE SHIELDS & *als.*
vs.
85 ARTHUR SHIFF. } No. 8102. Division "A."

Know all men by these presents that we, Catherine Shields & *als.*, as principals, and Gustave A. Breaux, of New Orleans, La., as surety, are held and firmly bound unto James T. Clark, clerk of the civil district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of one hundred dollars; for the payment wherefore we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seal, and dated in the city of New Orleans, on this fifteenth day of January, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas the above bounded Catherine Shields & *als.* have this day filed a motion of appeal from a final judgment rendered against them in the suit of Catherine Shields & *als. vs.* Arthur Shiff, No. 8102, of the civil district court for the parish of Orleans, on the 2d day of January, 1884, and signed on the eleventh day of January, 1884:

Now, the condition of the above obligation is such that the above-bound Catherine Shields & *als.* shall prosecute their said
86 appeal, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise that the said Gustave A. Breaux shall be liable in their place.

(Signed) CATHERINE SHIELDS & ALS.,
Per BREAUX & HALL, *Att'ys.* [SEAL.]
(Signed) GUS. A. BREAUX. [SEAL.]

87 *Claim of Mrs. B. Shiff, &c, offered in Evidence by Plaintiff. Filed April 15, 1865.*

STATE OF LOUISIANA:

United States District Court, Eastern District of Louisiana.

UNITED STATES
vs.
FIFTEEN LOTS OF GROUND, Property of Eustace Surget. } No. 7978.

Arthur Shiff, residing in Paris, France, now in New Orleans, in his own right, and as the attorney-in-fact in behalf of his mother, Mrs. B. Shiff, and of his brother, Eugene Shiff, also residing in Paris, comes into court and files this petition of claim and intervention, and respectfully represents that said claimants are the owners and holders of six promissory notes, all dated at New Orleans, the 28th of January, 1860, made by R. P. Hunt to his own order, and payable at the Bank of Louisiana, in this city, whereof two, for five thousand dollars each, are made payable on the 15th of January, 1862; two, for five thousand dollars each, on the 20th of January, 1862, and two, for two thousand dollars each, on the 25th day of January, 1862, of which said notes the said Mrs. B. Shiff
88 is the owner and holder of the four notes for five thousand dollars each, the said Eugene Shiff of one of the notes for two thousand dollars, and the said Arthur Shiff of the other notes for two thousand dollars.

That to secure the payment of said six promissory notes at maturity, together with all eventual interest at the rate of eight per cent. per annum, with attorney's fees in case of litigation, which are by the act fixed at five per cent. on the amount recovered, the said Robert P. Hunt, by an act passed before Theodore Guyol, notary public, dated the 28th January, 1860, mortgaged and hypothecated in favor of Edward Shiff, and of all future holder or holders of said notes—

1st. Two lots, with the improvements, in the second district of this city, in the square bounded by Rampart, Basin, Bienville, and Conti streets, No. 6 & 7, each measuring 31 feet front on Rampart & Basin streets, by a depth of 120 feet.

2d. A lot in same square 32 feet 4 inches front on Rampart and Basin by a depth of 120 feet.

3d. A lot adjoining lot last described, measuring 33 feet 3 inches, more or less, on Rampart and Basin streets, by one hundred
89 and twenty feet deep. The said Robert P. Hunt in said mortgage covenanting not to alienate or encumber the property aforesaid to the prejudice of said mortgage, said lots being the property secondly set out and described in the libel herein, and condemned as forfeited to the United States under a decree of this honorable court on the — day of April present, for threasonable acts and doing on the part of the said Eustace Surget, who, by an act passed before the said Theodore Guyol, under date the 18th day of April, 1860, purchased the same from the said R. H. Hunt, and as-

sumed the payment of the notes aforesaid, the whole of which will more fully appear on reference to the said six notes, and the authenticated copies of the mortgage & sale annexed thereto as a part of this petition.

Your petitioners show that in virtue of the premises their claim upon the proceeds of the property so mortgaged to them is entitled to priority to the claim of the United States, and should be paid by preference.

Wherefore they pray that said claim may be allowed, and that the marshall be ordered to pay out of the proceeds of the property herein and in the said libel secondly described the amount thereof, together with interest at the rate of eight per cent. per annum
90 from maturity till payment, and five per cent. thereon for attorney's fees, and that the same be paid to claimants in the proportion in which they are holders of said notes, to wit, to Mrs. B. Shiff the amount due upon the four notes for five thousand dollars each ; and to the said Eugene Shiff and Arthur Shiff the amount due upon the two notes of two thousand dollars each, of which each are holders of one. That notes of this intervention and claim be served upon Rufus Waples, district attorney for the United States, and they pray for all further relief in the premises.

(Signed) E. BRIGGS, *Proctor.*

Affidavit.

Arthur Shiff, claimant herein, in his own behalf and as agent and in behalf of his mother, Mrs. B. Shiff, and his brother, Eugene Shiff, being duly sworn, says: That all three of the aforesaid claimants are loyal citizens of the United States; that they left New Orleans for Paris in the year eighteen hundred and thirty, and returned from thence to reside in New York in the year eighteen hundred and forty-nine, from whence Mrs. B. Shiff returned to Paris in eighteen hundred and fifty-seven, and was followed by her son,
91 the said Eugene Shiff, in eighteen hundred and fifty-nine, where they have since that date resided ; that the claimant, Arthur Shiff, left New Orleans with his mother in eighteen hundred and thirty and returned with her to New York in eighteen hundred and forty-nine, where he constantly resided up to eighteen hundred and sixty, when the death of his brother and the necessity of attending to his family interests obliged him to pay occasional visits to New Orleans, returning from time to time to Paris, where he now permanently resides; that he has, in conformity with the requisition of the authorities, taken the amnesty oath that no persons other than the claimants are directly or indirectly interested in said claim, and that all the facts in said claim set forth are true.

(Signed) ARTHUR SHIFF.

Sworn to and subscribed before me, this 15th April, 1865.

(Signed) K. LEOVY, *Dy Clerk.*

Libel of Information. Offered in Evidence by Plaintiff. Filed January 24, 1865.

UNITED STATES
vs.
THIRTEEN LOTS OF GROUND, Property of Eustace Surget. } No. 7978.

92 To the Honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The libel of information of Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, who prosecutes for the said United States in his behalf, and being here present in court in his own proper person, in the name and behalf of the United States of America against the "estate, property, money, stocks, credits, and effects," hereinafter described, and against all persons intervening for their interest therein in a case of seizure and forfeiture alleges, propounds, and declares as follows:

I. That Benj. F. Flanders, supervising special agent of the Treasury Department, by virtue of the act of Congress, approved on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, entitled "An act to suppress insurrection, to seize and confiscate the property of rebels, and for other purposes," heretofore, that is to say, on the 15th day of May, in the year one thousand eight hundred and sixty-three, seized as forfeited to the United States at New Orleans, within said district, and within the jurisdiction of this court, nine lots of ground with the build-

93 ings and improvements thereon, situate in the fourth district of this city, in the square bounded by Saint Mary, Felicity, Camp, and Ches-nut streets, and designated by the Nos. 1, 2, 3, 4, 5, 6, 7, 8, & 9, as per plan drawn by C. A. Hedin, dated Dec. 11th, 1854, and deposited in the office of T. O. Stark, notary public, being plan No. 191, and measuring lots Nos. 1, 2, 3, 4, 5, 6, 7, and 8 each 27 feet 2 inches front on Saint Mary street by a depth of 125 feet 2 lines between parallel lines, lot No. 1 being the corner of Ches-nut and Saint Mary streets; lot No. 9 measuring 33 feet 9 inches 6 lines front on Saint Mary street by a depth of 125 feet 7 inches 2 lines on the line dividing it from lot No. 8, & 125 feet 7 inches 6 lines on the opposite side line, and 18 feet width in the rear.

All the aforesaid lots are bounded in the rear by an alleyway for the common use thereof. Acquired by purchase from Mandeville & McIlhenny as per act passed before Walter H. Peters, notary public, dated January 9th, 1861.

Three certain lots of ground, with all the buildings and improvements thereon, situate in the second district of this city, in the square bounded by Rampart, Conti, Basin, and Bienville streets,

94 and designated by the Nos. 5, 6, & 7, as per plan drawn by the city surveyor, on the 12th day of May, 1819, and deposited in the office of M. de Armas, notary public, and measuring lot No. 5 32 feet 4 inches front on both Rampart and Basin streets; lots Nos. 6 & 7 each 31 feet front on both Rampart and Basin streets; all three lots having each a depth of 120 feet.

A certain lot of ground, with all the buildings and improvements thereon, situate in the same square, adjoining lot No. 5, on the line toward Conti streets, measuring 33 feet 3 inches, more or less, French measure, front on both Rampart & Basin streets, by a depth of 120 feet, acquired by purchase from R. P. Hunt, as per act passed before Theodore Guyol, notary public, dated April 18th, 1860.

II. That Eustace Surgent is and was on the 17th day of July, 1862, and previously thereto had been, the owner of the above-described property.

III. That certain States, forming a part of the territory, and consisting a part of the United States of America, and especially enumerated by the President of the United States in his proclamation, duly issued, and bearing date of the first day of July, A. D.
95 eighteen hundred and sixty-two are now engaged and were, at the time said proclamation was issued, engaged, and have since continued to be engaged, in armed rebellion against the lawful authority of the United States.

IV. That by the act of Congress of the United States, approved the 17th day of July, in the year of our Lord 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," provision was made for the seizure and confiscation of the property of persons engaged in armed rebellion against the lawful authority of the United States, and of other persons, as therein set forth.

V. That the said Eustace Surget, subsequently to the said seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, did act as an officer of the army of the rebels in arms against the Government of the United States, and that while owning property in a loyal State or territory of the United States, or of the District of Columbia, he did aid and comfort to the rebellion against the United States, and did assist such rebellion.

VI. That the said Eustace Surget, subsequently to the said seventeenth day of July, in the year of our Lord one thou-
96 sand eight hundred and sixty-two, did hold an office in the so-called Confederate States of America, after having held an office of trust or profit in the United States, and did hold an office or agency under the *the* government of the so-called Confederate States of America, or under one of the States thereof, said office being national, State, or municipal in its name and character, which said office or agency he accepted after the date of the pretended ordinance of secession of the State of Louisiana; that he did take an oath of allegiance to or to support the constitution of the so-called Confederate States.

VII. That the said Eustace Surget, subsequently to the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, within a State or Territory of the United States, was engaged in armed rebellion against the Government of the United States, and — not, within sixty days after public warning and proclamation duly given and made by the President of the United States, on the twenty-fifth day of July, in the year one thousand eight hun-

dred and sixty-two, cease to aid, countenance, and abate such rebellion, and return to his allegiance to the United States.

97 VIII. That the said Eustace Surget, subsequently to the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, within a State or Territory of the United States, was engaged in aiding and abetting an armed rebellion against the Government of the United States, and did not, within sixty days after public warning and proclamation, duly given and made on the twenty-fifth day of July, in the year one thousand eight hundred and sixty-two, by the President of the United States, cease to aid, countenance, and abet such rebellion, and return to his allegiance to the United States.

IX. That by reason of the premises, the property herein described, and all right, title, interest, and estate of the said Eustace Surget herein, became and was forfeited to the United States, and ought to be condemned to their use.

Wherefore the said attorney, in the name and behalf of the United States of America, prays that process of monition may issue against the said property, and the owner and owners thereof, and against all persons interested or claiming an interest therein, warning them at some early day, to be named therein, to appear

98 and answer this libel of information, and that an order of publication may be made in the usual form, and that the court may grant such further and other relief as to law and justice may appertain and as this court is competent to give in the premises, and that, after due proceedings had, the same may be condemned to the use of the United States of America, and he prays for further relief.

(Signed) RUFUS WAPLES,
U. S. Dist. Att'y for the Eastern Dist. of Louisiana.

Order of Publication Annexed to Libel of Information.

United States District Court, Eastern District of Louisiana.

UNITED STATES
vs. } No. 7978.
THIRTEEN LOTS OF GROUND, Property of Eustace Surget.

Whereas certain property fully described in the libel filed by the district attorney, and now of record in this court, together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging or in any wise appertaining, and all the right, title, and interest of Eustace Surget therein, has been seized by the marshal of the United States

99 for the eastern district of Louisiana, by virtue of an act of Congress approved on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes;" and whereas the United States attorney for the eastern district of Louisiana did, on the 24th day of January, A. D. 1865,

file a libel of information in this court, praying the condemnation of said property and real estate under the act aforesaid, and that process of monition issue against the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, warning them at some early day to appear and answer said information:

It is, therefore, on this 24th January, in the year of our Lord eighteen hundred and sixty-five, ordered that notice be given to the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, to appear and answer this information on the 13th day of February, 1865, and show cause, if any they have, why said property and real estate, and the right, title, and interest therein of the said Eustace Surget, should not be condemned and sold according to law, and that notice
100 be given by posting a copy of this order upon the front door of the court-house of the district, and by publication in the True Delta newspaper twice a week previous to said 13th day of February, 1865, the first publication to be on or before the 26th inst.

N. O., January 24th, 1865.

(Signed) E. H. DURELL, *Judge.*

Marshal's Warrant, offered in Evidence by Plaintiff. Filed February 14th, 1865.

UNITED STATES
vs.
THIRTEEN LOTS OF GROUND, Property of Eustice Surget. } No. 7978.

The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, Greeting:

You are hereby commanded forthwith to seize and into your possession take the thirteen lots of ground fully described in the libel filed by the district attorney, and now of record, together with the buildings and improvements thereon, rights, ways, privileges, and other hereditaments thereunto belonging, and all the
101 right, title, and interest of Eustace Surget therein, now libelled by the United States of America, for the causes set forth in the libel now pending in the district court of the United States for the eastern district of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or persons having, or pretending to have, any right, title, or interest in or to the same, to be and appear before a district court of the United States, for the district aforesaid, to be holden at the city of New Orleans on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said property should not be condemned and sold agreeably to the prayer of the libellant; and how you have executed this warrant that you make return according to law.

Witness the Honorable Edward H. Durell, judge of the said court,

at New Orleans, this 24th day of January, 1865, and the 89th year of the Independence of the United States.

[SEAL.] (Signed) W. S. BENEDICT,
D'y Clerk.

102 *Marshal's Return.*

Received January 25th, 1865, and in obedience to the within warrant seized and took in my possession the within-described property, posted copies of this warrant, the libel, and order of the judge on the door of the court-house, and published monition in the True Delta, a daily newspaper printed and published in New Orleans on the 27th January & 2d, 7, 11th Feb'y, 1865.

(Signed) A. BOISBLANC,
D'y U. S. Marshal.

United States Marshal's Monition, Annexed to Marshal's Warrant.

True Delta. Monitions. United States Marshal's Monition.

In the United States District Court, Eastern District of Louisiana.

UNITED STATES
vs.
THIRTEEN LOTS OF GROUND, Property of Eustace Surget. } No. 7978.

In obedience to a warrant issued in this court, to me directed in the above-entitled suit, I have seized and taken into my possession
103 nine lots of ground, with the buildings and improvements thereon, situate in the fourth district of this city, in the square bounded by St. Mary, Felicity, Camp, and Chestnut streets, and designated by the Nos. 1, 2, 3, 4, 5, 6, 7, 8, & 9, as per plan drawn by C. A. Hedin, dated December 11th, 1854, and deposited in the office of T. O. Starke, notary, being plan No. 191, and measuring, lots Nos. 1, 2, 3, 4, 5, 6, & 8, each 27 feet 2 inches front on St. Mary street by a depth of 125 feet 2 lines between the parallel lines.

Lot No. 1, being the corner of Chestnut and St. Mary streets; lot No. 9 measuring 33 feet 9 inches 6 lines front on St. Mary street by a depth of 125 feet 7 inches 2 lines on the line dividing it from lot No. 8, and 125 feet 7 inches 6 lines on the opposite side line, and 18 feet in width in the rear. All the aforesaid lots are bounded in the rear by an alley-way for the common use thereof, acquired by purchase from Mandeville & McIlhenny, as per act passed before Walter H. Peters, notary, dated Jan'y 9th, 1861.

Three certain lots of ground, with all the buildings and improvements thereon, situate in the second district in this city, in the square bounded by Rampart, Conti, Basin, Bienville streets, and designated by the Nos. 5, 6, and 7, as per plan drawn by the city surveyor on the 12th day of May, 1819, and deposited in the
104 office of M. de Armas, notary, and measuring, lot No. 5, 32 feet 4 inches front on both Rampart and Basin streets; lots

Nos. 6 and 7, 31 feet front on both Rampart and Basin streets, all three lots having each a depth of 120 feet.

A certain lot of ground, with all the buildings and improvements thereon, situate in the same square, adjoining lot No. 5, on the line toward Conti street, measuring 33 feet 3 inches, more or less, French measure, front on both Rampart and Basin streets by a depth of 120 feet, acquired by purchase from R. P. Hunt as per act passed before Theo. Guyol, notary, dated April 18th, 1860, together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging or in anywise appertaining, and all the right, title, and interest of the said Eustace Surget thereon, now libeled by the United States for the reasons assigned and set forth in the libel in the above-entitled suit now pending in the said district court. And I do hereby cite and admonish the owner or owners thereof and all persons having or pretending to have any right, title, or interest in or to the same to be and appear at a district court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the date hereof, to show cause, if any they have or can,
105 why the said property should not be condemned and forfeited to the United States agreeably to the prayer of the libel.

United States marshal's office. New Orleans, 26th day of January, 1865.

(Signed) CUTHBERT BULLITT,
U. S. Marshal.

Intervention & Claim of Bartholomew Mullen. Offered in Evidence by Plaintiff. Filed January 9th, 1865.

In the United States District Court for the Eastern District of Louisiana.

THE UNITED STATES
vs.
THIRTEEN LOTS OF GROUND, Property of E. Surget. } No. 7978.

To the honorable the judge of the district court of the United States for the eastern district of Louisiana:

Now comes into the said court Bartholomew Mullen, residing in New Orleans, and intervening for his interest herein exhibits this his libel of intervention and claim upon the property of Eustace Surget, herein seized and now in custody of the marshal of this district, in virtue of a warrant issued from this court in the above-entled cause, and alleges and articulately propounds as fol-
106 lows:

I. That the said Bartholomew Mullen is a loyal citizen of the United States, and is a privileged creditor of the said Eustace Surget in the sum of three thousand six hundred dollars, for this: That the said Bartholomew Mullen sued out a writ of attachment on or about the 19th day of November, 1863, in the sixth district court

of New Orleans, being a court of competent jurisdiction, against the property of said Eustace Surget, agreeably to the laws of Louisiana, and that the sheriff of New Orleans did seize and take into his possession, under said writ of attachment, the property described in the libel of information filed by the district attorney of the United States herein, and the said property did keep in his possession as so attached, from the said 19th November, 1863, until the present time; that the said writ of attachment was issued upon the petition, duly sworn to, and upon a bond duly given by said Bartholomew Mullen, in which petition it was asserted that said Eustace Surget was indebted to said Bartholomew Mullen in a large sum of money, for which judgment was claimed by said Mullen against said Surget with privilege on the property attached; that after due proceedings of
107 law judgment was rendered by said court in said suit in favor of the said Bartholomew Mullen against the said Eustace Surget for the sum of three thousand one hundred and sixty-nine dollars and sixty-three cents, with legal interest of five per cent. per annum from the 5th October, 1862, until paid, two dollars and fifty cents costs of protest and costs of suit, with privilege upon the property attached; that upon said judgment & in execution of the same a writ of *fieri facias* was issued from the said sixth district court of New Orleans, directed to the sheriff of the parish of Orleans, who seized and advertised for sale according to law, under said writ, the property described in the libel of information herein, on the 24th February, 1864; that the said seizure and execution is still in force, and has never been released, although the sale of the property seized was stayed by military authority, and that the seizure under attachment and execution aforesaid constitute by the law of Louisiana a lien and privilege in favor of the said Bartholomew Mullen for the amount of his judgment aforesaid, say three thousand six hundred dollars, upon the property seized by the United States marshal herein.

108 II. That the judgment in favor of Bartholomew Mullen against Eustace Surget, rendered by the sixth district court of New Orleans as aforesaid, has been recorded in the office of the recorder of mortgages for the parish of Orleans and city of New Orleans, and by such register has acquired and has the effect of a general and judicial mortgage upon all the property of Eustace Surget in the parish of Orleans and city of New Orleans, according to the laws of Louisiana.

III. That by the laws of the United States, as well as by the laws of Louisiana, the property of the said Eustace Surget is liable for said debt and interest, and that said intervenor is entitled to be paid the amount of the indebtedness owing to him as aforesaid in preference over other creditors of said Eustace Surget, and over the claims of the United States out of the property of said Eustace Surget now under seizure as aforesaid.

IV. That the property described in the libel of information herein has been illegally seized by the United States marshal, the same being at the time under seizure by the sheriff of the parish of Or-

leans, and that the seizure by the marshal cannot interfere with or prejudice the seizure by the sheriff.

109 V. That the property described in the said libel of information herein was not seized by the supervising special agent of the Treasury Department as forfeited to the United States on the 15th May, 1863, as alleged in the libel of information herein, inasmuch as the said property was not captured property; neither was it abandoned property.

VI. That all and singular the allegations of facts herein contained are true.

Wherefore this intervenor prays this honorable court to pronounce in favor of this his demand; that he be recognized as a privileged and hypothecary creditor of the said Eustace Surget in the manner and form and for the amount hereinbefore set forth, and that in case the property of said Eustace Surget herein seized be condemned and sold, then that this intervenor be decreed entitled to receive by privilege and preference over the United States and over all other claimants, out of the proceeds thereof, the said sum of three thousand six hundred dollars, with accruing interest thereon; and this intervenor prays for all such other and further relief and remedy as the nature of the case may require and to law and justice shall appertain.

110 (Signed) BUCHANAN & GILMORE,
Proctors of Intervenors.

Affidavit.

Bartholemew Mullen, being duly sworn, deposes: That the allegations of the forgoing intervention and claim are true.

(Signed) BARTHOLEMEW MULLEN.

Sworn to and subscribed before me, this 9th day of February, 1865.

(Signed) K. LOERY, *D'y Clerk.*

Testimony for Libellant. Offered in Evidence by Plaintiff. Filed March 7th, 1865.

United States District Court, Eastern District of Louisiana.

UNITED STATES. —
THE PROPERTY OF EUSTACE SURGET. } No. 7978.

Testimony taken before me, Chas. Claiborne, U. S. com'r, this 7th March, 1865, in presence district att'y.

H. O. BENEDICT, being duly sworn, deposes and says:

I knew Eustace Surget; I knew him before the rebellion;
111 he was a citizen of Natchez; he often travelled on the steamboat of which I was clerk, and in this manner I became acquainted with him; my first interview with him was in New Iberia, Louisiana; he then held the office of major and ass't adj. gen'l to General Dick Taylor, in the Confederate service; he wore

the full rebel uniform of his rank, and was in armed rebellion against the Government of the U. S. This was during the years 1862, 1863, & 1864, up to the 18th March, 1864, at which time I saw him last, he then holding the same office of ass't adj. gen'l under General Dick Taylor.

(Signed) H. O. BENEDICT.

Sworn to and subscribed before me, this 7th March, A. D. 1865.

(Signed) CHS. CLAIBORNE,
U. S. Commissioner.

Testimony for Libellant. Offered in Evidence by Plaintiff. Filed March 19th, 1865.

United States District Court, Eastern District of Louisiana.

UNITED STATES
vs.
THE PROPERTY OF EUSTACE SURGET. } No. 7978.

112 Testimony taken before me, Charles Claiborne, U. S. commissioner, this 29th day of March, 1865, in presence of district attorney.

SAMUEL M. TODD, being duly sworn for libellant, deposes and says:

I knew a man named Eustace Surget, who resided at Natchez, Miss. I had seen him there, and also in this city, previous to the rebellion. He was a cotton planter.

After the rebellion broke out I first saw him in Opelousas, La., on 21st September, 1862. He had the rank of a major, and wore the uniform denoting his rank. He was adj. general for Gen. Dick Taylor, and was on his staff, and in armed rebellion against the Government of the United States. He issued an order to me on said Sept., 1862, to proceed to Alexandria, La., to take command of the post. I did so.

After that time I received numerous orders from him. One of the orders was to shoot down the present governor of this State, J. Madison Wells, on account of his being an uncompromising Union man. I had divers orders from said Eustace Surget to shoot down Union men.

113 These last orders were given me in August, 1863. I know these orders emanated from him, because they were in his own handwriting, signed by command of General Taylor, E. Surget, adj. general.

At the time the above orders were issued Maj. General Taylor was in the eastern portion of the State, with Walker's division, Confederate army.

I last saw him on 29th March, 1864, when he held the same position as adj. gen'l, and was still in armed rebellion against the Government of the United States.

I never executed these orders to shoot down Union men. I saw Gov. Wells and spoke with him while I had the order in my pocket. I showed him the order.

Eustace Surget had me court-martialed for disobedience of this order. He preferred the charges himself.

E. Surget is a man of about 5 feet 9 inches high, black hair, and a piercing black eye, and about 28 or 30 years of age; a very straight, dignified, young-looking man.

(Signed) SAM. M. TODD.

Sworn to and subscribed before me, this 29th March, 1865.

(Signed) CHS. CLAIBORNE,
U. S. Commissioner.

114 *Interrogatories Propounded to Bartholemew Mullen, Intervenor Herein. Filed April 4th, 1865.*

United States District Court, Hon. E. H. Durell, Judge.

UNITED STATES OF AMERICA
vs.
13 LOTS OF GROUND, &c., the Property of Eustace Surget. } No. 7978.

On motion of Rufus Waples, United States attorney, in behalf of said United States, libellants herein, on suggesting that Bartholemew Mullen has intervened in this case, claiming $3,600 dollars of the proceeds of the property libelled herein, with lien and privilege therein, and on further suggesting that the said attorney, in behalf as aforesaid, herewith files interrogatories propounded to said intervenor, it is ordered that Bartholemew Mullen, intervenor herein, be served with a copy of said interrogatories, and that said intervenor answer the same categorically in writing, and under oath, within one day from the service thereof, in default of which the interrogatories shall be taken *pro confesso:*

1st. Are you friendly to the organization styled "The Confederate States of America"?

2. Were you friendly to the so-called "Southern Confeder-
115 acy" at the time you took your oath of allegiance to the United States, filed herein?

3. Have you been friendly to it at any time since?

4th. Did you then desire, and have you since desired, the success of the so-called Southern Confederacy?

5th. Did you then desire, and have you since desired, the defeat of the Federal army or any part thereof?

6th. Did you then desire, have you since desired, or do you now desire, that the States and people in rebellion shall gain their independence of the United States Government?

7th. Did you then or do you now wish that the Government of the United States may fail in its efforts to coerce the insurgents, rebels, confederates, and traitors to obedience, and to subjugate them to Federal authority?

8th. Have you expressed in words or in writing a wish that any Federal general should fail to take Richmond, Vicksburg, Port Hudson, Charleston, or any other town or any State? If you have expressed a contrary wish, state particularly whether your sympa-

thies in this war are now and have been more with the Union
116 than with the Confederate cause—more with President Lincoln than with Jefferson Davis.

9th. Have you ever yielded allegiance to the "Confederate States Government"?

10. Have you abjured that allegiance? State particularly the time and circumstances of your recantation.

11th. Is your present loyalty to the Federal Government merely passive in its character, and not active so as to aid by all your power and influence in the suppressing of the rebellion, and the restoration of Federal rule in Louisiana and throughout the Southern States, and over the whole country? If you have stated that your loyalty is active, please state fully what you have done and are doing against the Confederacy and against the rebellion, and what you have done and are doing for the Federal cause.

12. Did you take your oath of allegiance filed herein with the intention of again yielding allegiance to the Confederate authority in case they should regain possession of this city and State?

13. Have your associates been and are they now with the friends and adherents of the Confederate Government in preference to the opponents of that Government?

14. Have you ever aided the Confederate cause or its soldiers or its civil officers or its adherents or its sympathisers, or any
117 State in insurrection, by contribution of money, by loan, by word or act, or by any means?

15. Have you so aided since taking the oath of allegiance, filed by you herein? If you have answered affirmatively to either of the last two questions, state whether you sincerely regret that you so aided, and whether you now wish that your aid had been given to the Federal cause?

16. Are you now seeking to have your claim allowed with the intention of purchasing the property on which it is alleged to be privileged for the purpose of restoring said property to its present owner (that is, its owner before confiscation) upon his future return to the city?

17th. Is any person interested with you whose interest is not in your bill of intervention?

18th. Are you opposed to the execution of the confiscation acts passed by Congress, and have you filed your bill of intervention with any other motive than that of collecting your debt?

19th. Have you taken the oath of allegiance filed herein with any other motive than that of collecting your debt and transacting business?

(Signed) RUFUS WAPLES,
United States Attorney.

118 *Note of Evidence. Offered in Evidence by Plaintiff. Filed April 4th*, 1865.

UNITED STATES
vs.
THE PROPERTY OF EUSTACE SURGET. } No. 7978.

The libellants offered in evidence the adm'g war't, monition, and marshal's return, and the testimony of H. O. Benedict and S. M. Todd, taken before United States commissioner, filed 7th and 29 March, 1869.

Marshal's Return to Interrogatories Propounded to B. Mullen, Intervenor herein. *See page* 98.

Received April 5th, 1865, and on the same day, month, and year served a copy of the within interrogatories on Bartholemew Mullen personally.

New Orleans, April 5th, 1865.

(Signed) M. EGAN,
D'y U. S. Marshal.

Answers of B. Mullen, Claimant, to Interrogatories. Offered in Evidence by Plaintiff & filed April 6th, 1865.

United States District Court.

UNITED STATES
vs.
13 LOTS OF GROUND, &c., the property of E. Surget. } No. 7978.

119 The claimant, Bartholemew Mullen, answers the interrogatories propounded to him by the district attorney, as follows:

Interrogatory 1. No.
" 2. No.
" 3. No.
" 4. No.
" 5. No.
" 6. No.
" 7. No.
" 8. No.
" 9. No.

Respondent yielded the same allegiance to the Confederate States government during the time that it was the government *de facto*, and exercised military authority in New Orleans, that all the citizens of New Orleans yielded to it, and no other or further allegiance.

Interrogatory 10th. Respondent did abjure the said allegiance at the time and under the circumstances specified in his oath of allegiance to the United States, herein filed. He has remained in the city ever since the same has been occupied by the Federal Government, and has always demeaned himself as a loyal citizen of the U. S.

Interrogatory 11. Respondent was always opposed most decidedly to the secession of Louisiana from the Union, and to the waging of war by Louisiana against the United States, and that he has contributed to the support of the Federal Govern-
120 ernment, and continues to do so, by paying his taxes to the United States.

Interrogatory 12th. No. He took the oath in good faith.

Interrogatory 13th. Respondent does not enquire into the political opinions of persons with whom he may choose to associate.

Interrogatory 14th. Not to respondent's knowledge.

Interrogatory 15th. This is answered by the two previous answers.

Interrogatory 16th. No.

Interrogatory 17th. No.

Interrogatory 18th. No.

Interrogatory 19th. Respondent took said oath for the purpose of proving his loyalty to the Government of the United States.

(Signed) B. MULLEN.

Sworn to and subscribed before me, this 6th April, 1865.

(Signed) CH'S BENEDICT, *D'y Clerk.*

121 *Writ of Vendition- Exponas. Offered in Evidence by Plaintiff. Filed June 3d*, 1865.

United States District Court, Eastern District of Louisiana.

UNITED STATES
vs.
THIRTEEN LOTS OF GROUND, the Property of Eustace Surget. } No. 7978.

The President of the United States of America to the marshal of the eastern district of Louisiana, or either of his deputies, Greeting:

Whereas at a district court of the United States, holden at New Orleans, for and within the said district, on the fourth day of April, A. D. 1865, thirteen lots of ground, the property of Eustace Surget with all the buildings and improvements thereon, fully described in the libel on file, were, after proclamation and due proceedings had, decreed forfeited and ordered to be sold at public auction: These are, therefore, to command you to sell to the highest bidder, at public auction, at Merchants' Exchange, 18 Royal street, within said district, on the 17th day of May, 1865, at 12 o'clock m., the said 13 lots of ground, &c., first giving thirty days' notice at least of
122 the time and place of sale, by advertising the same in the True Delta, one of the newspapers printed at New Orleans, and by proclamation in the usual form on the day of sale, the money arising from the sale to be paid into the registry of said court, to be disposed of as the law in this case directs.

And make due return hereof, with your doings herein.

Witness the Honorable E. H. Durell, at New Orleans, this 10th day of April, A. D. 1865, and 89th year of the Independence of the United States of America.

(Signed) W. S. BERNARD, *D.y Clerk.*

Marshal's Return. Received April 10th, 1865.

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

NEW ORLEANS, *May* 31, 1865.

Pursuant to this precept, I have caused the property within named to be offered for sale at public auction, and to the highest bidder, at the Merchants' Exchange, 18 Royal street, on the day, hour, and place therein directed, having given thirty days' previous notice of the time, place, and manner of the sale in the True Delta, one of the newspapers printed in the city of New Orleans, and by
123 the crier on the day of sale, and at such sale the purchasers were as under, but there not having been bid two-thirds of the appraised value thereof, there was a portion of the property not sold at the first adjudication, which part was again advertised for sale full ten days, as per order of the hon. judge of the district court of the United States to that effect, in which advertisement the terms, place of sale, & conditions were fully set forth; and having complied with all the previous legal requisites, the property 2dly advertised was sold on the 30th day of May, 1865, as will be seen below, viz:

Arthur Shiff:

Five lots of ground in the square bounded by Rampart, Basin, Conti, & Bienville streets, in the second district of this city, with all the buildings and improvements thereon; cash	$22,000 00

2d sale—Geo. S. Mandeville:

Nine lots of ground, with all the buildings and improvements, in the fourth district of this city, in the square bounded by St. Mary, Chestnut, Felicity, and Camp streets:		
Note in one year	$900	
Cash	900	
		1,800 00
Total amount sales		$23,800 00

124 Reference is also made to the certificate of mortgage hereto annexed, whereby the gross sales amounted to twenty-three thousand eight hundred dollars —— cents, which I pay over to C. C. Claiborne, Esq., the clerk of the court aforesaid, to be disposed of as the court directs.

Attest: A. BAUDOUIN,
D'y Marshal.

Received from Cuthbert Bullett, United States marshal, twenty-three thousand eight hundred dollars, being (as he saith) the proceeds of the aforegoing sale, the monies to be disposed of as the court directs, and for which I have signed duplicate receipts.

(Signed) W. S. BENEDICT,
D'y Clerk.

Mortgage certificate annexed, to wit:

OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Orleans, city of New Orleans, State of Louisiana, certifies that in the records in his office there are no other mortgages standing in the name of Eustace Surget, and recorded against the property described in the printed slip hereto annexed, than the following, to wit:

1st. B. 75, f. 224. The reversion he took per act before T. Guyol, notary, the 18 April, 1860, up to $15,900 and interest.

125 2d. B. 67, f. 237. Of the mortgage granted by Robert P. Hunt in favor of his vendor, John Egerton, on the lots 6 & 7, secondly decribed, to secure $28,000 as principal, and $4,500 as interest, now reduced to $15,900, as per act before T. Layton, notary, the 30 November, 1855.

3d. B. 75, f. 224. The reversion he took by the aforesaid act of Guyol up to $24,000 and interest.

4. B. 74, f. 512, Of the mortgage granted by said Hunt in favor of Edward Shiff on the 4 lots, 2dly & 3dly decribed, to secure $24,000 and interest, as per act before said notary Guyol, on the 28 January, 1860.

5. B. 75, f. 224. And the one granted in favor of said Hunt, his vendor, on the said 4 lots, to secure $10,000 & interest, as per said —— of Guyol, the 18th April, 1860.

6th. B'k T. M., No. 7, fo. 462. Recorded on the 7 November, 1853. The general one in favor of this city resulting from a judgment rendered by the 5th justice court on the 19th Sept., 1853, for the sum of $14 and 40 cents, with interest stipulated in said judgment and costs of suit against E. Surget.

7th. B'k J. M., No. 8, fo. 483. Recorded on the 13 Sept., 1855.

126 The general one in favor of the same resulting from a judgment rendered by the 2d justice court on the 18th July, 1855, for the sum of $9 and 40 cents, with interest stipulated in said judgment and costs of suit against the same.

8th. B'k J. 11, fo. 202. The one resulting from the inscription of a writ of attachment, No. 10784, 6th district court, Bartholemew Mullen *vs.* E. Surget, on lot 3dly described, to pay and satisfy $3,169.63, interest and costs.

9th. B'k J. M., No. 11, fo. 383. Recorded on the 3d Feb'y, 1865. The general one in favor of Bartholemew Mullen, resulting from a judgment rendered by the 6th district court on the 5th February, 1864, for the sum of $3,169 and 33 cents, with interest stipulated in said judgment and costs of suit against E. Surget.

10th. B. P. 1, f. 370 & 391. The privileges in favor of the first & second draining districts, lying on the property in their respective limits.

(Signed) J. W. MULDEN,

New Orleans, May tenth, 1865. *Recorder.*

127 *Printed Slip annexed to Mortgage Certificate.*

In the United States District Court, Eastern District of Louisiana.

UNITED STATES
vs.
THIRTEEN LOTS OF GROUND, the Property of Eustace Surget. } No. 7978.

By virtue of a writ of *venditioni exponas*, to me directed in the above-entitled suit, I will proceed to sell to the highest bidder, on Wednesday, the 17th day of May, 1865, at 12 m., at the Merchants' and Auctioneers' Exchange, No. 18 Royal street, the following described property, viz:

For description of property, see page 86.

Terms: Cash, at time of adjudication in U. S. Treasury notes.

United States marshal's office, New Orleans, 11th day of April, 1865.

(Signed) CUTHBERT BULLITT,
United States Marshal.

Note of Evidence. Filed May 20th, 1865.

UNITED STATES
vs.
13 LOTS OF GROUND, Property of E. Surget. } No. 7978.

Mr. B. Shiff & *al.* offered in evidence the 6 notes marked
128 1, 2, 3, 4, 5, & 6, act of mortgage marked O, act of sale P, & power of attorney 9 (judgment). B. Mullen offered in evidence oath of allegiance R, transcript of proceedings suit No. 10784, 6th district court of N. O., marked S, & certificate from mortgage office attached. Also his answers to interrogatories "submitted."

Power of Attorney Marked 9. *Filed 20th May*, 1865.

STATE OF LOUISIANA, *City of New Orleans:*

UNITED STATES
vs.
13 LOTS OF GROUND, Property of E. Surget. } No. 7978.

I certify that by two several powers of attorney annexed to acts existing in the records in this office and passed before Theodore Guyol, late notary, under the respective dates of the 9th and 21 January, 1861.

Mrs. Bazilise Shiff, Eugene Shiff, Theodore Shiff, and Adele Bougueret, his wife, and Mrs. Cora Gauttier, born Shiff, all formerly of New Orleans, U. S. of America, and now residing at Paris, in the Empire of France. Which parties have granted to George Urquhart, of New Orleans, the power to act for them generally and specially, in all and everything in which they are interested
129 in New Orleans or elsewhere in the United States of America, to sell or to buy, to encumber or hypothecate, to accept

or reject a succession, to contract a loan or acknowledge a debt, to draw or endorse bills of exchange or promissory notes, to compromise or refer a matter to arbitration, to make a transaction in matters of litigation, to sell and transfer all or any property, real or personal shares, bank stocks or any other securities belonging or coming to them, to ask, demand, sue for, collect and receive all debts, sums of money, dividends, rents, and any other value now due, or which shall be hereafter become due, owing or belonging to them from any source whatever, and to invest the same in any manner or in any securities as he shall deem best.

To which said powers, in exercise of the power of substitution in said acts contained, the said George Urquhart, in his said capacity, substituted, nominated, and appointed Messrs. Arthur Shiff, Eugene Shiff, Theodore Shiff, Gustave Shiff, and Henry Shiff, of this city, to be the attorney in fact, in his place, of the said before-named constituents, fully authorizing and empowering them to do and perform, jointly and separately, all and singular the acts, mat-
130 ters, and things specified and set forth in said annexed powers of attorney, in the same manner, and to the same extent that he himself is authorized to do and perform.

(Signed) FELIX McCULLOCH,
Not. Pub.

Petition offered in Evidence by Defendant, & Filed August 23, 1880.

State of Louisiana, Fifth District Court for the Parish of Orleans.

ARTHUR SHIFF *vs.* EUSTACE SURGET.

No. 10780, of the late fifth district court, and transferred by law to the civil district court for the parish of New Orleans, under the No. 205.

To the honorable the judge of the fifth district court for the parish of Orleans:

The petition of Arthur Shiff, who resides in the city of
131 New Orleans, respectfully represents that, by an act executed on January 28th, 1860, before Theodore Guyol, a notary public in this city, Robert P. Hunt, a resident of New Orleans, declared and acknowled himself to be justly and truly indebted unto Edward Shiff, also of New Orleans, in the full amount of twenty-four thousand dollars, for which sum he executed and delivered unto the said Edward Shiff his six several promissory notes, made payable to his own order and by himself indorsed, all dated on the twenty-eight- day of January, 1860, bearing interest at the rate of eight per cent. per annum from maturity until paid, four of said notes for the sum of five thousand dollars each, payable, two on the fifteenth and two on the twentieth of January, 1862, and the other two notes, each for the sum of two thousand dollars, payable on the twenty-fifth day of the same month and year. That in order to secure the punctual payment of the said notes, together with all interest, the said said Robert P. Hunt did, by said act, specially mortgage, affect, and

hypothecate in favor of the said Edward Shiff, or any future holders of said notes, the following-described property, to wit:

132 1st. Two lots of ground, with the buildings and improvements thereon, situate in the second district of this city, in the square bounded by Rampart, Basin, Bienville, and Conti streets, and designated by the Nos. seven and six on a plan drawn by Jh. Pilié on the 11th day of May, 1819, and deposited in the office of Michel de Armas, then notary in this city, by act of the sixteenth day of June of the same year. Said lots having each, in French measure, thirty-one feet front on each Rampart and Basin streets by a depth of one hundred and twenty feet, and being the same property purchased by the said Hunt from John Egerton by an act passed before Thomas Layton, notary, on the thirtieth day of November, 1855.

2d. Another lot of ground, with the improvements thereon, situate in the same square, designated by the No. eleven on the said plan, and having thirty-two feet four inches front on each of said Rampart and Basin streets by one hundred and twenty feet in depth.

3d. And another lot of ground, with the improvements thereon, situate on the same square, adjoining the lot last described, and having, in French measure, thirty-three feet three inches, more or less, in front on each of said Rampart and Basin street-, by

133 one hundred and twenty feet in depth, which said ten lots, secondly and thirdly described, were purchased by the said Hunt from Robert J. Ward, by an act passed before T. O. Stark, notary, on the nineteenth day of January, 1857.

That the said Robert P. Hunt bound himself not to sell, alienate, or encumber the said above-described property to the prejudice of said act.

That the said six notes were duly paraphed *ne varietur* by the said notary to identify them with the said act of mortgage, an authentic copy of which is hereto annexed and made a part of this petition.

Petitioner further represents that, by another act extended on April 18th, 1860, before Theodore Guyol, notary, the said Robert P. Hunt sold the said above-described property, together with the buildings and improvements thereon, and all the rights, ways, privileges, and appurtenances thereunto belonging, or in anywise appertaining, to Eustace Surget, then a resident of the city of Natchez, State of Mississippi.

That in consideration of the above purchase, and in part payment of the price of the said above-described property, and the

134 said Surget assumed and bound himself to pay and take up at maturity in the place and stead of the said Robert P. Hunt the said six above-described promissory notes, amounting together to the sum of twenty-four thousand dollars, exclusive of interest; and also assumed the mortgage on said property securing the payment of said notes, and that the said Eustace Surget, in the said act of April 18th, 1860, also bound himself no- to sell, alienate, or encumber the said property to the prejudice of the said act; all of which will more fully appear by reference to an authentic copy of

said act of sale and mortgage of April 18th, 1860, which is hereto annexed and made part of this petition.

Petitioner admits that the said notes are entitled to the following credits for amounts paid on May 17th, 1865: On each of the four notes of five thousand dollars the sum of three thousand three hundred and fifty-six 11¼.100 dollars on account, on each of the two notes for two thousand dollars, the sum of thirteen hundred and forty-two 45⅔ dollars on account.

Petitioner further represents that the said Eustace Surget refuses or neglects to pay the balance due on said notes, though thereto amicably requested.

135 That your petitioner is the holder and owner of the said six above-described notes, which are hereto annexed and made of this petition.

That said authentic acts import confusion of judgment, and entitles petitioner to executory process herein.

Wherefore, the premises considered, your petitioner prays that an order of seizure and sale may issue herein, commanding the civil sheriff for the parish of Orleans to seize the said above-described property in whosesoever hands found, and to sell the same for cash, according to law, and that the process of the sale of the said property be appropriated by preference over all other creditors, to pay and satisfy your petitioner's said claim for the sum of twenty-four thousand dollars, with interest at the rate of eight per cent. per annum on ten thousand dollars from January 15th, 1862, until paid, subject to a credit of six thousand seven hundred and twelve 22½-100 dollars, paid on May 17th, 1865, and interest at the rate of eight per cent. per annum on ten thousand dollars from January

136 20th, 1862, until paid, subject to a credit of six thousand seven hundred and twelve 22½-100 dollars, paid on May 17th, 1865, and interest at the rate of eight per cent. per annum on four thousand dollars from January 25th, 1862, until paid, subject to a credit of twenty-six hundred and eighty-four 90⅔-100 dollars, paid on May 17th, 1865, and all costs of suit.

Further prays for all general and equitable relief in the premises.

(Signed) T. GILMORE,
ARTHUR DENIS,
Att'ys.

Order.

Let a writ of seizure and sale issue as herein prayed for and according to law.

(Signed) W. H. ROGERS, *Judge.*

New Orleans, 22d June, 1880.

Notice of Demand of Payment.

STATE OF LOUISIANA, *Parish of Orleans, City of New Orleans:*

Fifth District Court.

ARTHUR SHIFF
vs.
EUSTACE SURGET. } No. 10780.

To Eustace Surget, New Orleans:

137 Take notice that payment is demanded of you, within three days from the service hereof, of the amount specified in the prayer of the accompanying petition, with interest and costs. In default of payment within that delay a writ of seizure and sale will issue, under the order rendered and endorsed on the said petition, and the property therein described will be seized and sold according to law.

Clerk's office, New Orleans, this 23d day of June, 1880.

(Signed) JOHN J. HANNAN,
D'p. Clerk.

Sheriff's Return.

Received June 23d, 1880, and, after due and diligent search and enquiry, I was unable to find Eustace Surget, defendant herein, nor any agent to represent him, and I was credibly informed that he has left this State, and resides permanently in France.

Returned same day.

(Signed) T. A. BOYLE,
D'y Sheriff.

138 *Notice of Demand of Payment on Curator.*

STATE OF LOUISIANA, *Parish of Orleans, City of New Orleans:*

Fifth District Court for the Parish of Orleans.

ARTHUR SHIFF
vs
EUSTACE SURGET. } No. 10780.

To Eustace Surget, absent from the State, through Henry C. Miller, Esq., appointed by the court to represent:

Take notice that payment is demanded of you, within three days from the service hereof, of the amount specified in the prayer of the accompanying petition, with interest and costs, and in default of payment within that delay a writ of seizure and sale will issue, under the order rendered and endorsed on the said petition, and the property therein described will be seized and sold according to law.

Clerk's office, New Orleans, this 24th day of June, 1880.

(Signed) JNO. J. HANNAN,
D'y Clerk.

Sheriff's Return.

Received June 24th, 1880, and on June 24th, 1880, I served a copy of within notice of demand of payment and accompanying petition and order personally on Henry C. Miller, att'y, appointed by the court to represent Eustace Surget, absent, defendant herein.

(Signed) P. A. BOYLE,
D'y Sheriff.

139 *Oath of Curator. Filed June 24th, 1880.*

STATE OF LOUISIANA:

Fifth District Court for the Parish of Orleans.

ARTHUR SHIFF
vs.
EUSTACE SURGET. } No. 10780.

Before me, John J. Hannan, deputy clerk of the fifth district court for the parish of Orleans, personally came and appeared Henry C. Miller, who solemnly swear that he will well and faithfully perform all and singular the duties of attorney-at-law to represent the defendant herein. So help him God.

(Signed) HENRY C. MILLER.

Sworn to and subscribed before me, New Orleans, June —, 187-.

(Signed) JNO. J. HANNAN,
Deputy Clerk.

Writ of Seizure & Sale.

STATE OF LOUISIANA:

Fifth District Court for the Parish of Orleans.

ARTHUR SHIFF
vs.
EUSTACE SUGET. } No. 10,780. Fifth Dist. Court.

140 The State of Louisiana to the civil sheriff of the parish of Orleans, Greeting:

You are hereby commanded, in the name of the State of Louisiana and of the fifth district court for the parish of Orleans, to seize and sell for cash and according to law the following-described property, to wit:

1st. Two lots of ground with the buildings & improvements thereon, situate in the second district of this city, in the square bounded by Rampart, Basin, Bienville, and Conti streets, and designated by the Nos. seven and six, on a plan drawn by J'h Pilie, on the 11th of May, 1819, and deposited in the office of Michel de Armes, then notary in this city, by act of the sixteenth day of June of the same year, said two lots having each, in French measure, thirty-one feet front on each of Rampart and Basin streets by a depth of one hundred and twenty feet.

2d. Another lot of ground, with the improvements thereon, sit-

uate in the same square, designated by the No. eleven on the said plan, and having thirty-two feet four inches front on each of said Rampart and Basin street- by one hundred and twenty feet in depth.

3d. And another lot of ground, with the improvements thereon, situate in the same square, adjoining the lot last described, and having, in French measure, thirty-three feet three inches,
141 more or less, in front on each of said Rampart and Basin streets by one hundred and twenty feet in depth, all of which will more fully appear by reference to said act herety annexed and made part hereof.

To pay and satisfy your petitioner's claim, to wit, twenty-four thousand dollars, with interest at the rate of eight per cent. per annum on ten thousand dollars from January 15th, 1862, until paid, subject to a credit of six thousand seven hundred and twelve 22½-100 dollars, paid on May 17th, 1865, and interest at the rate of eight per cent. per annum on ten thousand dollars from January 20th, 1862, until paid, subject to a credit of six thousand seven hundred and twelve 22½-100 dollars, paid on May 17th, 1865, and interest at the rate of eight per cent. per annum on four thousand dollars, from January 25th, 1862, until paid, subject to a credit of twenty-six hundred and eighty-four 90 23-100 [dollars], paid on May 17th, 1865, and all costs of suit.

And what you do in the premises you make return thereof, together with this writ, to our said court, as the law directs.

Witness the Honorable Walter H. Rogers, judge of our said
142 court, this 29th day of June, in the year of our Lord one thousand eight hundred and eighty, and in the one hundredth and fourth year of the Independence of the United States.

(Signed) JNO. J. HANNAN,
Dep. Clerk.

Sheriff's Return Annexed to Writ.

Received June 29th, 1880, and on June 29th, 1880, J. R. Alcee Gauthreaux, late sheriff of this parish, seized the property described in the within annexed notice of seizure, marked "A," which said notice of seizure marked "A," with the return on the reverse of the same, is herewith made part of said return, caused the seizure of said property to be duly recorded in the office of the recorder of mortgages in and for the parish of Orleans and city of New Orleans, and no payment being made;

And after the legal delay had expired the said property was advertised for sale on the third day of July, 1880, in the following manner, to wit, by advertisement composed in English and French announcing the sale to take place at the Merchants and Auctioneers' Exchange, on Royal street, between Canal and Custom-House streets, in the second district of this city, on the third day of August,
143 1880, at 12 o'clock m.; said advertisements were inserted and published in English and French in two papers in the city of New Orleans, to wit, in the N. O. Daily Democrat and New Orleans Bee, from the said third day of July, 1880, to the day of sale, being full thirty days from the date of the first notice given in said news-

papers; said advertisements were inserted and published in said newspapers on the 3d, 10, 17, 24, 31 July, and 3d August, 1880, in English in the New Orleans Daily Democrat, and in French in the New Orleans Bee. And after further having complied with and performed all the additional previous legal requisites, and after the said property having been duly appraised, did expose the same at public sale, according to law, at the said Merchants and Auctioneers' Exchange, on Royal street, between Canal and Custom-House streets, in the second district of this city, on the said third day of August, eighteen hundred and eighty, at 12 o'clock m., and having first announced in a loud and audible voice the terms and conditions hereinafter expressed and specified, and having also read verbatim, and in a loud and audible voice, the certificate of the recorder of mortgages for the parish of Orleans and the city of New Orleans,
144 delivered on the day of sale, and showing the mortgages and liens existing at the time of sale in the name of said defendant against the said property, and also the certificate of the register of conveyances for the parish of Orleans and city of New Orleans, delivered on the day of sale:

When Arthur Denis, for ac. Arthur Shiff, being the highest and last bidder, the said property was adjudicated *to* the present sheriff, Thomas Duffy, to the said Arthur Denis, for account of the said Arthur Shiff, for the price and sum of nineteen thousand dollars ($19,000), payable cash, and which was settled for in the following manner, to wit:

1st. The purchaser has paid in cash the costs and charges of this suit, amounting in all, as detailed on the reverse hereof, to the sum of six hundred and twenty-five $\frac{20}{100}$ [dollars]	625 20
2d. And the said purchaser being the plaintiff in this case and holder of the mortgage, the first in rank, under which this sale was made, has retained in his hand on account of his claim and of said mortgage the balance of the price of adjudication, amounting to eighteen thousand three hundred and seventy-four $\frac{80}{100}$ [dollars]	18,374 80
Amount of sale	$19,000 00

Returned Nov. 26th, 1880.

145 (Signed) EWEN RICKER,
D'y Sheriff.

Charges Annexed to Writ.

Printing, "Democrat"	16 80
Do. "Bee"	16 80
Clerk's fees	19 60
Sheriff's "	11 00
Mortgage certificate	1 50
Conveyance "	1 50
Erasing mortgages	4 00

Appraiser fees	10 00
Exchange duty	19 00
Commission on sale	475 00
	575 20
Curator *ad hoc* fees	50 00
5 per ct., attorney's fees	1,583 32
	$2,208 52

Taxes.

Drainage, paid	
State taxes 1876, '77, & '78, paid	
City " 1877, 1878, & 1879, paid	
State & city taxes 1880, to be paid purchaser	
Claim, am't due May 17, 1865	$14,281 32
Int. 8 per ct. per annum from May 17, 1865, to August 3d, 1880	17,385 06
	$31,666 41

Correct. E. & O. E. Nov. 26th, 1880.
(Signed) J. D. BAXTER,
D'y Sheriff.

146 *Notice of Seizure Annexed to Writ.*

STATE OF LOUISIANA, *Parish of Orleans:*

In the Fifth District Court for the Parish of Orleans.

SHERIFF'S OFFICE, PARISH OF ORLEANS.
NEW ORLEANS, *June 29th*, 1880.

ARTHUR SHIFF
vs.
EUSTACE SURGET. } No. 10780.

To ———:

Take notice that by virtue of a writ of seizure and sale hereunto me directed I seize and demand of you the rent now due, and which may hereinaf[ter] become due, pending the seizure herein made, for the occupation of premises situated Rampart, Basin, Bienville, and Conti streets, which you will pay over to me.
(Signed) ADAM SCHMIDT, JR.,
Deputy Sheriff.

Sheriff's Return.

And on June 30th, 1880, I served a copy of within notice of rent garnishee on Alphonse Lelong, who pays $125.00 per month, due July 1st, 1880.
(Signed) J. H. BOYLE,
D'y Sh'ff.

71 N. Rampart St.

Do not collect any rent, by order of plaintiff's att'y.
N. O., June 30, '80.
(Signed) ADAM SCHMIDT, Jr.,
Dy Sheriff.

147 *Notice of Seizure, Marked "A," Annexed to Writ.*

In the Fifth District Court for the Parish of Orleans.

Sheriff's Office, Parish of Orleans,
New Orleans, *June 29th*, 1880.

Arthur Shiff
vs. } No. 10780.
Eustace Surget.

To Eustace Surget, absent from the State, through H'y C. Miller, attorney appointed by the court to represent him:

Take notice, that I have seized, and in three days from the service hereof shall proceed to advertise and sell, according to law, the following-described property, to wit: 1st. Two lots of ground, with the buildings and improvements thereon, situated in the second district of this city, in the square bounded by Rampart, Basin, Bienville, & Conti streets, and designated by the Nos. 7 and 6 on a plan drawn by J'h Pilié on the 18th May, 1819, and deposited in the office of Michel de Armas, then notary in this city, by act of the 16th day of June, 1819, said two lots having each, in French measure, thirty-one feet front on each Rampart and Basin streets by a depth of one hundred and twenty feet.

2d. Another lot of ground, with the improvements thereon,
148 situate in the same square, designated by the No. 11 on the said plan, and having thirty-two feet four inches front on each of said Rampart and Basin streets by one hundred and twenty feet in depth.

3d. An- another lot of ground, with the improvements thereon, situate in the same square, adjoining the lot last described, and having in French measure thirty-three feet three inches, more or less, in front on each of said Rampart and Basin streets by one hundred and twenty feet in depth.

To pay and satisfy the writ issued in this case, say the sum of $24,000.00, with interest and costs, subject to a credit of $16,109.35⅔ & interest, unless the same is immediately paid.
(Signed) ADAM SCHMITT, Jr.,
Dy Sheriff.

Sheriff's Return.

And on June 29th, 1880, I served a copy of within notice of seizure on Eustace Surget, absent from this State, through H. C. Miller, att'y appointed by the court to represent him, defendant herein.
(Signed) J. A. BOYLE,
Dy Sheriff.

149 Advertisement annexed, to wit:

Fifth District Court for the Parish of Orleans.

ARTHUR SHIFF
vs.
EUSTACE SURGET. } No. 10780.

By virtue of a writ of seizure and sale to me directed by the honorable the fifth district court for the parish of Orleans in the above-entitled cause, I will proceed to sell at public auction, at the Merchants' and Auctioneers' Exchange, Royal street, between Canal and Custom-House streets, in the second district of this city, on Tuesday, August 3d, 1880, at 12 o'clock m., the following-described property, to wit:

1st. Two lots of ground, with the buildings and improvements thereon, situated in the second district of this city, in the square bounded by Rampart, Basin, Bienville, and Conti streets, and designated by the numbers seven and six on a plan drawn by J'h Piliee, on the eleventh of May, 1819, and deposited in the office of Michel de Armas, then notary in this city, by act of the sixteenth day of June, 1819, said two lots having each in French measure thirty-one feet front on each of Rampart and Basin streets by a depth of one hundred and twenty feet.

150 2d. Another lot of ground, with improvements thereon, situated in the same square, designated by the number eleven on the said plan, and having thirty-two feet four inches front on each of said Rampart and Basin streets by one hundred and twenty feet in depth.

3d. And another lot of ground, with the improvements thereon, situated in the same square, and having in French measure thirty-three feet three inches, more or less, in front on each of said Rampart and Basin streets by one hundred and twenty feet in depth.

Seized in the above suit.

Terms cash on the spot.

(Signed) J. R. ALCEE GAUTHREAUX,
Civil Sheriff of the Parish of Orleans.

Motion to Appoint an Attorney to Represent Defendant. Filed June 24th, 1880.

Fifth Dist. Court.

ARTHUR SHIFF
vs.
EUSTACE SURGET. } No. 10780.

On motion of Arthur Denis and T. Gilmore, of counsel for plaintiff, and upon showing to the court from the return of the sheriff
151 upon the notice of demand herein issued that the defendant is absent from this State and reside in France, and has left no known agent in this State, it is ordered that Henry C. Miller, Esq., be appointed attorney to represent said defendant, to whom notice of de-

mand shall be given in the manner pointed out by law and contradictorily with whom the seizure and sale shall be prosecuted.

Motion & Order. Filed August 25th, 1880.

Civil Dist. Court.

ARTHUR SHIFF
vs.
EUSTACE SURGET. } No. 205.

On motion of Henry C. Miller, appointed by the court to represent the absent defendant, Eustace Surget, it is ordered—

That the fee of Henry C. Miller, Esq., appointed by the court to represent the absent defendant herein, Eustace Surget, be taxed at the sum of fifty dollars.

152 *Affidavit as to Proof of Publication of Monition, and Notes of Proof Offered to Homologate Same. Filed November 3d*, 1880.

ARTHUR SHIFF
vs.
EUSTACE SURGET. } No. 10780, 5th Dist. Court.
No. 205, Civil Dist. Court, Parish of Orleans.

Alexander T. Donavan, being duly sworn, says: That the monition in the above-entitled cause, copies whereof in the English and French languages are hereunto annexed, was duly published in the New Orleans Democrat (a daily newspaper of good standing, published for at least one year consecutively in the city of New Orleans) of the 22d and 28 September and 5th, 14th, and 20th October, 1880, in the English language; and in the French language in L'Abeille de la Nouvelle-Orleans, a daily newspaper of good standing, published in the city of New Orleans for at least one year consecutively, of the 22d and 28th September, and 5, 14, and 20th of October, 1880.

(Signed) ALEX. T. DONAVAN.

Sworn to & subscribed to before me, this Nov. 1st, 1880.

(Signed) H. MIESTER,
D'y Clerk.

153 On the motion to homologate the monition in the above-entitled cause plaintiff offers in evidence the entire record of this cause, including the writ of seizure and sale, and the sheriff's proceedings and return thereon; also the sheriff's deed, the application for monition, and the said monition, the New Orleans Democrat of the 22d & 28th September, 5, 14, and 20th Oct., 1880, and the L'Abeille de la Nouvelle-Orleans of the same dates, as well as the affidavit of Alex. T. Donavan, as above.

Judgment on Monition. Filed November 6th, 1880.

ARTHUR SHIFF
vs.
EUSTACE SURGET. } No. 10780, 5 Dist. Court.
No. 205, Civil Dist. Court, Division "D."

And now appeared in open court A. Denis and T. Gilmore & Sons, of counsel for the plaintiff, who became purchaser at a judicial sale herein made by the civil sheriff of the parish of Orleans on the third day of August last past of the following-described property, to wit:

First. Two lots of ground, with the buildings and improvements thereon, situated in the second district of this city in the
154 square bounded by Rampart, Basin, Bienville, and Conti streets, and designated by the numbers seven and six on a plan drawn by L. H. Pilié, dated May 11th, 1819, and deposited in the office of Michel de Armas, then a notary in this city, by act of June 16th, 1819, said two lots having each, in French measure, thirty-one feet front on each of Rampart and Basin streets by a depth of one hundred and twenty feet.

2d. Another lot of ground, with the improvements thereon, situated in the same square, designated by the number eleven *and* said plan, having thirty feet four inches front on each of said Rampart and Basin streets by one hundred and twenty feet in depth.

Third. And another lot of ground, with the improvements thereon, situated in the same square, adjoining the lot last described, and having, in French measure, thirty-three feet three inches, more or less, front on each of said Rampart and Basin streets by one hundred and twenty feet in depth.

And who subsequently applied to this court, as the legal successor of the late fifth district court for the parish of Orleans, under whose decree said property was sold for a monition, pursuant
155 to sections 2370 to 2373 of the Revised Statutes of this State, for the confirmation of said sale, and said counsel having moved for the homologation of said monition, and the confirmation of said sale upon the proof submitted by them, and the court being satisfied from the evidence adduced of the regularity of said sale, and that the monition has been inserted and published in the newspapers for the space of time, and in the manner pointed out by law, that the property has been correctly described, and the price at which it was purchased truly stated, and no cause being shown against the payer of the monition, it is ordered, adjudged, and decreed that said sale and said monition be confirmed and homologated.

Judgment rendered November 3d, 1880. Judgment signed November 6th, 1880.

(Signed) N. H. RIGHTOR, *Judge.*

Motion to Withdraw Notes. Filed February 11th, 1881.

ARTHUR SHIFF vs. EUSTACE SURGET. } No. 10780. 5th Dist. Court. No. 205. Civil Dist. Court.

On motion of Arthur Denis and T. Gilmore, of counsel for plaintiff, it is ordered that said plaintiff have leave to withdraw
156 the six notes herein sued over upon leaving copies thereof.

Petition for Monition. Filed September 10th, 1880.

Civil Dist. Court for the Parish of Orleans.

ARTHUR SHIFF vs. EUSTACE SURGET. } No. 205.

The petition of Arthur Shiff, plaintiff in the above-entitled suit, which was transferred from the late fifth district court for the parish of Orleans, and filed and docketed in this honorable court, respectfully represents:

That on August 3d, 1880, your petitioner bought at sheriff's sale, as per deed registered in the conveyance office August 30th, 1880, and recorded in the clerk's office of this court August 31st, 1880, the following-described property, to wit:

1st. Two lots of grounds, with the buildings and improvements thereon, situated in the second district in this city in the square bounded by Rampart, Basin, Bienville, & Conti streets, and designated by the numbers seven and six on a plan drawn by J. H. Pilie, dated May 11th, 1819, and deposited in the office of Michel de Armas, then a notary in this city, by act of June 16th,
157 1819, said two lots having each, in French measure, thirty-one feet front on each of Rampart and Basin streets by a depth of one hundred and twenty feet.

2d. Another lot of ground, with the improvements thereon, situated in the same square, designated by the number eleven on the said plan, and having thirty feet four inches front on each of said Rampart and Basin streets by one hundred and twenty feet in depth.

3d. And another lot of ground, with the improvements thereon, situated in the same square adjoining the lot described, and having, in French measure, twenty-three feet three inches, more or less, front on each of said Rampart and Basin streets by one hundred and twenty feet in depth.

That said property above described was sold under and virtue of a writ of seizure and sale directed by the late fifth district court to J. R. Alcee Gauthreaux, then civil sheriff for the parish of Orleans, in the suit of Arthur Shiff *vs.* Eustace Surget, No. 10780 of the docket of said court, and transferred to Thomas Duffy, now civil sheriff of said parish.

That the adjudication of said property was made to your
158 petitioner for the price and sum of nineteen thousand dollars, and that your petitioner has complied with the terms

and conditions of said sale by paying in cash the amount of six hundred and twenty-five dollars and twenty cents, in full for all costs and charges of said suit, and by retaining in his hands the balance of the price, amounting to the sum of eighteen thousand three hundred and seventy-four dollars and eighty cents, on account of his claim as plaintiff in said suit, and his mortgage, first in rank, under which said property was sold, as will more fully appear by reference to said sheriff's deed recorded as aforesaid in the clerk's office of this honorable court.

That your petitioner desires to obtain from this honorable court a monition, according to law, to cure any informality in the order, decree, or judgment of the court under which the sale was made, or any irregularity in the appraisement and advertisement, in time or manner of sale, or any other defect whatsoever, if there be any.

Wherefore youa petitioner prays that it may please this honorable court to order that a monition issue in this suit as prayed for, and that your petitioner further prays for general relief.

(Signed) T. GILMORE & SONS,
GEO. C. PREOT,
Of Counsel.

159 *Order.*

Let a monition issue herein as prayed for and in accordance with law.

New Orleans, Sept. 10, 1880.

(Signed) W. T. HOUSTON, *Judge.*

Copy of Notes upon which Mortgage was Foreclosed. Filed June 22d, 1880.

ARTHUR SHIFF } N. 205. C. D. C.
vs.
EUSTACE SURGET. } No. 10780. Fifth Dist. Court.

$5,000. NEW ORLEANS, *January 28th,* 1860.

On the fifteenth January, 1862, after date, I promise to pay to the order of myself at the Bank of Louisiana, in this city, five thousand dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) R. P. HUNT.

No. 4678. Due 15–18 Jan., 1862.

[Endorsed across face:] *Ne varietur.* New Orleans, January 28th, 1860. (Signed) Theo. Guyol, not. pub.

Endorsed: (Signed) R. P. Hunt. (Signed) Arthur Shiff.

This note is credited with the sum of $3,356.11¼, being one-fourth of the nett proceeds adjudged in favor of Mrs. B. Shiff in the case of the U. S. *vs.* Property of Eu. Surget, No. 7978 of the docket, for principal, interest, and att'y fees.

160 June 8, '65.

(Signed) K. LOEW, *D'y Clerk.*

$5,000. NEW ORLEANS, *January* 28, 1860.

On the fifteenth January, 1862, after date, I promise to pay to the order of myself at the Bank of Louisiana, in this city, five thousand dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) R. P. HUNT.

No. 4677. Due 15–18 January, 1862.

Endorsed: (Signed) R. P. Hunt. (Signed) Arthur Shiff.

This note is credited with the sum of $3,346.11¼, being one-fourth of the proceeds of sale adjudged in favor of Mrs. B. Shiff in the case of the U. S. *vs.* The Property of E. Surget, No. 7978 of the docket, for principal, interest, and att'y fees.

June 8, '65.

(Signed) K. LOEW, *D. Clerk.*

$5,000. NEW ORLEANS, *January 28th*, 1860.

On the twentieth January, 1862, after date, I promise to pay to the order of myself at the Bank of Louisiana, in this city, five thousand dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

161 (Signed) R. P. HUNT.

No. 4680. Due 20–23 of January, '62.

[Endorsed across face:] *Ne varietur.* New Orleans, January 28th, 1860. (Signed) Theo. Guyol, notary pub.

Endorsed: (Signed) R. P. Hunt. (Signed) Arthur Shiff.

This note is credited with the sum of $3,356.11¼, being one-fourth of the proceeds of sale adjudged in favor of Mrs. B. Shiff in the case of the U. S. *vs.* Property of E. Surget, No. 7978 of the docket, for principal, interest, and attorney's fees.

June 8th, '65.

(Signed) K. LOEW, *D'y C'lk.*

$5,000. NEW ORLEANS, *January 28th*, 1860.

On the twentieth January, 1862, after date, I promise to pay to the order of myself at the Bank of Louisiana, in this city, five thousand dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) R. P. HUNT.

No. 4679. Due 30–23 Jan'y, '62.

[Endorsed across face.] *Ne varietur.* New Orleans, January 28th, 1860. (Signed) Theo. Guyol, N. P.

Endorsed: (Signed) R. P. Hunt. (Signed) Arthur Shiff.

This note is credited with the sum of $3,356.11¼, being one-
162 fourth of the proceeds of sale adjudged in favor of Mrs. B. Shiff in the case of the U. S. *vs.* Property of E. Surget, No. 7978 of the docket, for principal and att'y fees.

June 8th, 1865.

(Signed) K. LOEW, *D'y Clerk.*

$2,000. NEW ORLEANS, *January 28th*, 1860.

On the twenty-fifth January, 1862, after date, I promise to pay to the order of myself at the Bank of Louisiana, in this city, two thousand dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) R. P. HUNT.

No. 4675. Due 25–28 Jan'y, 1862.

Endorsed across face: *Ne varietur.* New Orleans, January 28th, 1860. (Signed) Theo. Guyol, N. P.

Endorsed: (Signed) R. P. Hunt. (Signed) Arthur Shiff.

This note is credited with the sum of $1,342.45⅓, being one-twelfth of the proceeds of sale adjudged in favor of Arthur Shiff in the case of the U. S. *vs.* Property of E. Surget, No. 7978 of the docket, for principal, interest, and att'y fees. June 8th, 1865.

(Signed) K. LOEW, *D'y Clerk.*

$2,000. NEW ORLEANS, *January 28th*, 1860.

163 On the twenty-fifth January, 1862, after date, I promise to pay to the order of myself at the Bank of Louisiana, in this city, two thousand dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) R. P. HUNT.

No. 4676. Due 25–28 Jan'y, 1862.

Endorsed: (Signed) R. P. Hunt. (Signed) Arthur Shiff.

[Endorsed across face:] *Ne varietur.* New Orleans, January 28,'60. (Signed) Theo. Guyol, N. P.

This note is credited with the sum of $1,342.45⅓, being one-twelfth of the proceeds of sale adjudged in favor of Eugene Shiff in the case of the U. S. *vs.* Property of E. Surget, No. 7978 of the docket, for principal, interest, and att'y's fees. June 8, '65.

(Signed) K. LOEW. *D'y Clerk.*

Monition. Extract from the New Orleans Democrat of Wednesday, October 28, 1880.

Late Fifth District Court, State of Louisiana.

ARTHUR SHIFF *vs.* EUSTACE SURGET. } No. 10780.

The State of Louisiana to all whom these presents may come, Greeting:

164 Whereas Arthur Shiff has purchased at a public sale made by the civil sheriff of the parish of Orleans, on the third day of August, 1880, under and by virtue of a writ of

seizure and sale, directed by the late fifth district court for the parish of Orleans to J. R. Alcee Gauthreaux, then civil sheriff of the parish of Orleans, at the suit of Arthur Shiff *vs.* Eustace Surget, No. 10780 of the docket of said late court, and transferred to Thomas Duffy, now civil sheriff for said parish, the property hereinafter described, and has applied to this court for a monition or advertisement in conformity to law, and to sections 2370, 2371, 2372, 2373 of the revised statutes of Louisiana:

Now, therefore, know ye, and all persons interested herein are cited and admonished in the name of the State of Louisiana and of the civil district court of the parish of Orleans, who can set upon any right, title, or claim to and in the property hereinafter described, in consequence of any informality in the order, decree, or judgment of the court under which the same was made, or any irregularity or illegality in the appraisement or advertisements in time or manner of sale, or for any other defect whatever, to show cause within thirty days from the day of this monition is first
165 inserted in the public papers why the sale so made should not be confirmed and homologated.

That at said sale of the hereinafter described property Arthur Shiff became the purchaser for the price and sum of nineteen thousand dollars.

Description of property as contained in sheriff's deed of sale, registered in the conveyance office August 30th, 1880, and recorded in the clerk's office of the civil district court for the parish of Orleans, August 31, 1880:

1st. Two lots of ground, with the buildings and improvements thereon, situated in the second district of this city, in the square bounded by Rampart, Basin, Bienville, and Conti streets, and designated by the numbers seven and six on a plan drawn by J. H. Pilie, dated May 11, 1819, and deposited in the office of Michel de Armas, then a notary in this city, by act of June 16, 1819, said two lots having each in French measure thirty-one feet front on each of Rampart and Basin streets by a depth of one hundred and thirty feet.

2d. Another lot of ground, with the improvements thereon, situated in the same square, designated by the number eleven on
166 the said plan, having thirty feet four inches front on each of said Rampart and Basin streets by one hundred and twenty feet in depth.

3d. And another lot of ground, with the improvements thereon, situated in the same square, adjoining the lot last described, and having in French measure thirty-three feet three inches, more or less, front on each of said Rampart and Basin streets by one hundred and twenty feet in depth.

New Orleans, September 10, 1880.

(Signed) W. T. HOUSTON, *Judge.*
(Signed) JAMES T. CLARK, *Clerk.*

Certificate.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, James T. Clark, clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing one hundred and sixty-six pages do contain a true, correct, and complete transcript of all the proceedings had, documents filed, testimony and evidence
167 adduced upon the trial of the cause, wherein Catherine Shields, widow of Gabriel B. Shields, *et als.*, are plaintiffs, and Arthur Shiffs, defendant, instituted in this court, and now in the records thereof under the No. 8102.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said court at the city of New Orleans, on this seventh day of February, in the year of our Lord one thousand eight hundred and eighty-four, and in the one hundred and eight year of the Independence of the United States of America.

[SEAL.] (Signed) JAS. T. CLARK, *Clerk.*

168 *Clerk's Certificate for Extension of Time. Filed February 4th,* 1884.

SUPREME COURT, CLERK'S OFFICE.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

CATHERINE SHIELDS *vs.* ARTHUR SHIFF. } No. 8102.

CLERK'S OFFICE, NEW ORLEANS, *Feb'y* 4, 1884.

I hereby certify that the transcript of appeal in the above cause has not been completed for want of time, and that a delay of ten days is necessary to complete the same, the return day having been fixed at too short a date.

[SEAL.] (Signed) E. A. LUMINAIS,
Deputy Clerk Civil Dist. Ct.

Sworn to & subscribed before me, Feb. 4th, 1884.

(Signed) JULES VIENNE,
D'y Clerk.

Motion for Extension of Time. Filed February 4th, 1884.

On motion of Breaux & Hall, of counsel for appellant, and on suggesting that the transcript in above-entitled case is not ready, & will not be in time for filing on return day, as appears from clerk's certificate annexed thereto, and that ten days' further time are
169 required:

It is ordered that a delay of ten days be, and is hereby, granted to appellant within which to file the transcript of appeal.

Transcript of Appeal.

Filed February 11th, 1884.
(Signed) GEORGE W. DUPRE, *Clerk.*

Cause Submitted.

Extract from Minutes.

THURSDAY, *March 27th*, 1884.

The court was duly opened. Present: Their honors Edward Bermudez, chief justice; and Felix P. Poche, Robert B. Todd, Charles E. Fenner, Thomas C. Manning, associate justice-.

CATHERINE SHIELDS *et als.*
vs.
ARTHUR SHIFF. } No. 9091.

This cause was called for trial, and having heard argument from Gustave A. Breaux, Esq., of counsel for plaintiffs and appellant, and from Thomas Gilmore, Esq., of counsel for the defendant, appellee herein:

170 The court took said cause under advisement upon the briefs for parties in interest, and the papers now on file.

Opinion of Supreme Court of Louisiana. Filed May 19th, 1884.

CATHERINE SHIELDS, Widow, &c., *et als.*,
vs.
ARTHUR SHIFF. } No. 9091.

Appeal from the Civil District Court, Parish of Orleans.

Mr. Justice POCHE:

Plaintiffs sue as the sole heirs of blood of the late Eustace Surget for the recovery of immovable property which he once owned in the city of New Orleans, and which was confiscated under the legislation of Congress of July 17, 1862, generally known as the "confiscation act."

They allege that under that legislation the property in contest, which had been adjudicated under the confiscation proceedings to the defendant Shiff, reverted to them as the legal heirs of Surget, who died on the 1st of February, 1882.

For answer the defendant pleaded the general denial, and asserted his ownership of the property under a title from the sheriff of
171 the parish of Orleans by *a* virtue of a writ of seizure and sale issued in June, 1880, in his suit against Eustace Surget for the foreclosure of a mortgage securing the unpaid balance of certain promissory notes which he then held.

Plaintiffs have taken this appeal from a judgment rejecting their demand and recognizing the defendant as the lawful owner of the property.

Eustace Surget acquired the property in April, 1860, and as part of the purchase price he assumed the payment of notes secured by

mortgage on the same, executed by his vendor, amounting in capital to $24,000.

The property was confiscated in January, 1865, and sold in April following for $22,000 to the defendant Shiff, who had in the meantime become the holder of the notes assumed by Surget at his purchase. After deducting costs and taxes, the balance of the proceeds of the sale were paid over to Shiff, who had intervened in the confiscation proceedings, and who applied said proceeds to the satisfaction *pro tanto* of his notes.

As the mortgage which secured his notes contained the
172 *pact de non alienando*, Shiff obtained executory process in June, 1880, by proceeding against Eustace Surget directly for the payment of the unpaid balance due on two notes, and, the defendant being an absentee, the proceedings were carried on contradictorily with an attorney appointed by the court to represent him. The property was adjudicated to Shiff on the 3d of August, 1880.

Eustace Surget died in France on the 1st of February, 1882, leaving a last will, in which he instituted his wife, who survived him, his universal legatee.

Plaintiffs are shown to be the relatives of Surget in the nearest line, and to be his sole heirs-at-law.

Under our views of the controversy, in the light of the established jurisprudence on the true and correct meaning of the confiscation act, the pivotal issue in the case hinges upon the validity of the sale effected under the executory process instituted against Surget by the defendant Shiff in June, 1880.

A proper solution of that issue involves a consideration of the question of the effect of the confiscation on the perpetual ownership or fee of the confiscated property.

173 In the recent case of Avegno & *als. vs.* Schmidt & Zeigler, 35 An., 585, we had occasion to consider some of the effects of proceedings instituted under that legislation. Under the guidance of numerous decisions of the Supreme Court of the United States we established in that case the following propositions, which are to some extent involved in the present controversy, and which we shall therefore abstain from discussing in this opinion.

1st. The act of Congress of July 17, 1882, generally known as the "confiscation act," and the joint resolution of the same day explanatory thereto, must be construed together.

2d. In a sale — property confiscated thereunder, all that could be sold was a right to the property seized, terminating with the life of the person for whose offense it had been seized.

3d. Such proceedings and sale do not affect the rights of mortgage in favor of third persons on the property, which goes to the Government or to the purchaser *cum mere*.

4th. A mortgagee, under an act containing the *pact de non alienando*, can proceed against the mortgagor, after the latter's
174 expropriation through confiscation proceedings, as though the latter had never been divested of his title. Bigelow *vs.* Forrest, 9 Wall., 339; Day *vs.* Micon, 18 Wall., 160; Waples *vs.* Hays, Morrison's Transcript, vol. 5, No. 2. Under the principles

thus laid down resting on the high authority of the first tribunal of the land, and which we do not understand to be untested by either party in the case at bar, we conclude that the following propositions can be considered as fully established in the present controversy:

1st. That the title which Shiff acquired at the confiscation sale in M[illegible], 1865, expired with Surget at his death, in 1882.

2d. That the mortgage rights of Shiff on the fee of the confiscated property for the security of the unpaid balance of his notes were not affected by that sale, but remained in full force notwithstanding his acquisition of a life estate in the property, and his possession and enjoyment of the same under his title, and that in his case there was no extinction of either the debt or the security by reason of confusion, as provided in our code.

In this connection we must here remark that we are in
175 perfect accord with plaintiff's counsel in their well supported argument that the confiscation act, a Federal statute, must be construed and interpreted in all its effects under the rules and principles of the common law. To hold otherwise would be to run counter to all the decisions on this subject of the Supreme Court of the United States, the tribunal of all others eminently, not to say exclusively, qualified to expound in the last resort all legislation emanating from the Congress of the United States, but above all to interpret a legislation so peculiar in its character, the outgrowth to a terrific civil war and a relic of the feudal system once prevalent in England. Hence we cannot consider with any favor the contention of defendant's counsel in their advocacy of the proposition that after confiscation the offender had any right or interest or remainder in and to the property thus wrested from him by the strong arm of the Government.

Under the common law, the absolute ownership of the confiscated property was irrevocably vested in the sovereign. If the act of July 17th, 1862, had not been immediately followed and materially modified by the joint resolution explanatory thereto, it follows as
176 a logical conclusion that its intended effect in the minds of the framers would have been to completely forfeit the property from the offender and to vest it absolutely in the Government with full power to transfer it to a purchaser under an absolute title. But in our opinion that intention would have been controlled by and would have yielded to the counter check of that provision of the constitution which had its effect on the legislators of that day and drew from the restrictive declaration contained in their joint resolution. But the effect of that restriction operated only on the nature of the title which the Government acquired under the confiscation, and not on the divestiture of the offender's title, which remained complete and final.

Hence in treating of this subject in the case of Wallace & *als. vs.* Van Riswick, 92 U. S., p. 209, the Supreme Court of the United States uses the following strong and unambiguous language: "It was not doubted that Congress might provide for forfeitures effective during the life of the offender. The doubt related to the possible duration of a forfeiture, not to the thing forfeited, or to the extent

and efficacy of the forfeiture which it continued. It was to
177 meet the doubt that did exist that the resolution was adopted.
* * * Plainly it should be so construed as to leave it in accord with the general and leading purpose of the act of which it is substantially a part, for its object was not to defeat, but to qualify.

That purpose, as we have said, was to take away from an adherent of a public enemy his property, and thus deprive him of the means by which he could aid the enemy. * * * The obvious meaning is, that the proceedings for condemnation and sale shall not affect the ownership of the property after the termination of the offender's natural life; after his death the land shall pass or be owned as if it had not been forfeited.

Nothing warrants the belief that it was intended that, while the forfeiture lasts, it should not be completed, viz., a devolution upon the United States of the offender's entire right. The same doctrine was announced in the case of Pike *vs.* Wassel, 94 U. S., 711, and was reaffirmed in the case of French *vs.* Wade, 102 U. S., 134; and, in the language of that exalted tribunal, we may hold that it must now be considered as the settled rule of decision in that court. The
practical effect of that rule on the case now before us is that
178 after the condemnation the property was completely and absolutely wrested from Surget, who lost all control over or connection with it, to such an extent that a transfer of that property from Shiff, under his confiscation titles, to Surget would have vested in the latter nothing more than a life estate. 102 U. S., 134. Hence it is a safe and, in fact, an unavoidable conclusion that he could make no disposition whatever of the property which could bind the Government, his presumptive heirs, or any other party. Hence his honest intention in ratifying the title acquired by Shiff at the confiscation sale could produce no effect, and did not complete the latter's title. Chaffraix *vs.* Shiff, 92 U. S., 214.

It is, therefore, clear that he could not dispose of the property by will, and that the status of that property was not, as it could not be, affected by his last will made in France in the year 1872.

These considerations justify the conclusion that at the death of Surget, in 1882, the property reverted to plaintiffs, his legal heirs, unless the fee was divested by the executory process instituted by Shiff in 1880.

It will be noticed that in our decision of the Avegno case
179 we guardedly omitted to express any opinion as to the effect of the confiscation on the fee, which we intimated to have been vested either in the Government or in the purchaser at the confiscation sale. The decision of that point was not necessary to the solution of the issues in that case, but the necessities of this case require a discussion of that important question. As the Supreme Court of the United States has thus far eschewed that discussion, the task is hazardous and not free of difficulty. But although that exalted tribunal has not yet undertaken to finally "determine where the fee dwelt during the life estate," we are not left without some guidance from the wisdom of its utterances in our search for light on the subject.

As we have shown above, the absolute forfeiture of the offender's title has been held by that court as the immediate effect of the confiscation, and the court has also settled that the second effect was "a devolution upon the United States of the offender's entire right." This certainly and inevitably includes the fee, but under the effect of the joint resolution the fee in the Government was not to be perpetual; its duration depended upon and was limited by the
180 duration of the life of the offender, at whose death the fee reverted absolutely and forever to his heirs-at-law. Hence we conclude that during the life estate the fee dwelt in the Government, in trust for and for the use of the presumptive heirs of the offender. This conclusion is forfeited by the language of the Supreme Court in the case of Pike *vs.* Wassell, 94 U. S., 711, in which the presumptive heirs of the offender attempted and were allowed to regulate the administration of the property in some particulars by the life tenants. The Court said:

"It is true, as a general rule, that so long as the ancestor lives the heirs have no interest in his estate, but the question here is to the rights which the confiscation act has conferred upon the heirs apparent or presumptive of one whose estate in lands has been condemned and sold. In Wallach *vs.* Van Riswick, without undertaking to determine where the fee dwelt during the life estate, we decided that it was withheld from confiscation exclusively for the benefit of the heirs.

They and they alone could take it at the termination of the life estate. The children of Albert Pike, as his heirs apparent, are also apparently the next in succession of the estate.
181 Either they or their representatives must take the title when their father dies. If they do not hold the fee, they are certainly the only persons now living who represent those for whose benefit the joint resolution of Congress was passed. They at least appear to have the estate in expectancy.

Under these circumstances, as there is no one else to look after the interest of the succession, we think that they may be properly permitted to do whatever is necessary to protect it from forfeiture or incumbrance."

We have made this copious quotation from that masterly opinion, not only because it amply bears out our conclusion that during the life estate the fee was held by the Government and owned in expectancy by the presumptive heirs, but for the additional reason that it effectually explodes the very erroneous theory advocated by plaintiff's counsel to the effect that the reversion of the fee to the next of kin by the act of the Government has no foundation in law, but depends entirely on its generosity. The very reverse is the truth; the whole policy of the joint resolution was to restrict the effect of the condemnation so as not to affect the right of the heirs of blood. Hence it provided that "no punishment or pro-
182 ceedings under said act shall be so construed as to work a forfeiture of the real estate of the offender beyond his natural life." The next of kind therefore succeeds to his author through the laws of nature and descent, and not through the effect of the

confiscation law, which was shaped and circumscribed so as not to suspend or interfere with the natural and legal pre-existing rights of succession of the heirs of the blood.

The advocacy of this extraordinary theory by plaintiff's counsel was dictated by the necessities of their case, for under their system of attack against the validity of defendant's executory process, it becomes urgent that during the life of the offender they should have occupied the status of third parties towards the property in litigation. For the purpose of attack they claim to be third parties, but for the purpose of realizing the fruits of success they are transformed into heirs of the blood. The position is manifestly contradictory and absolutely untenable. If they are the donees of the United States and not the legal representatives or presumptive heirs of Eustace Surget, they are strangers in the cause, and there is no case before us.

183 But under their own allegations, supported by the best of evidence, they are the nearest living relatives, and they were in 1880 the presumptive heirs of Eustace Surget, and therefore they were not third parties *quoad* the mortgage foreclosed by defendant in his executory process.

Hence it follows that they can draw no comfort or relief from the want of reinscription of defendant's mortgage, and hence it follows that they are concluded by the failure or refusal of Surget to plead the prescription on Shiff's notes, which is now set up for the first time by them as a bar to the foreclosure of defendant's mortgage in 1880.

Could they be allowed to set up the plea of prescription in bar of the exercise of a right which has been exhausted by judicial enforcement, a line of attack not sanctioned by our jurisprudence, their plea would be met and defeated by a codicil in Surget's will added thereto in 1879, in which codicil he solemnly charged his executrix with the noble mission of doing everything in her power to complete the title of defendant to the very property now in litigation as an honest satisfaction of the very debt which his heirs-at-law

184 now seek to avoid and defeat.

Under the principles announced by the Supreme Court of the U. S. in the Pike case, these plaintiffs, who were then, as they are now, the only presumptive heirs of Surget, could and would have been permitted to defend the seizure and sale of this property in 1880. Evidently they were not third or disinterested parties *quoad* that proceeding, and thus are bound by its effect.

All these considerations naturally lead to the legal conclusion that the fee was vested in the purchaser at the sheriff's sale in August, 1880, and that the defendant Shiff, the lawful owner of the property, claimed by plaintiffs.

Judgment affirmed.

Todd, J., concurs in the decree.

Mr. Chief Justice BERMUDEZ concurring :

I concur in the opinion and decree just read, which appears to be in furtherance of the Federal juri-prudence, as expounded by the

U. S. Supreme Court itself. I consider that it is necessary, in order to meet the issues presented, to ascertain and determine where the fee dwelt after the condemnation & sale of the property,
185 and that the conclusion derived at may be reached from another standpoint. Writing on the right of property, civilians say that ownership is perfect, or imperfect ownership is the right by which a thing belongs to some one in particular to the exclusion of all others.

It vests in him who has the immediate dominion of it & not in him who has a mere beneficiary right. It is perfect when perpetual, & when the thing is unincumbered with any real right towards any other person than the owner. It is imperfect when it is to terminate at a certain time or on a condition. It is of the essence of the right of ownership that it cannot exist in two persons for the whole or entirety of the same thing. The ownership of Surget was *ab initio* perfect; that is, unqualified & therefore perpetual. The forfeiture arising out of his aid to the rebellion deprived him of the full or absolute ownership for the term of his natural life, from the time of confiscation & condemnation. The decree of condemnation and sale vested an imperfect ownership in the United States, which was to terminate when Surgett should die. It dismembered his perfect ownership into two imperfect ownerships, the one a
186 complement of the other, both parts of one & the same whole when this severance took place, the U. S. became the owner of the one, Surget remained the owner of the other. Nothing in the act suggests any other ownership, nothing in the opinions of the U. S. S. C. suggests any other individual as the absolute owner of the fee, until after the death of Surgett.

In the case of Rankin, 6 Mon., Ky., 531, a similar question was presented & was solved on the same sense.

A person under sentence of death for the crime of murder made his will & died before the execution of the sentence.

The court said the validity or invalidity of the will depends upon the question whether by the laws of the State the testator forfeited the whole of his estate upon being convicted of the murder. If on the conviction the whole of his estate was forfeited, there was nothing he could transmit to others & the will would be inoperative; but if notwithstanding there was not an entire forfeiture of all his estate, he was capable of disposing of his interest not forfeited, & as to that interest, be it that what it may, his will can have no operation and must be adjudged valid.

187 The statute of the State disposed of all the estate forfeited to the Commonwealth by directing it should pass & descend to his heirs. The question still remained whether the whole estate of the offender was, upon his conviction of felony, forfeited to the Commonwealth. The constitution of the State contained this clause, "That no attainder shall work corruption of blood, nor (except during the life of the offender) forfeitures of estate to the Commonwealth." "Nor the absolute fee-simple estate of the offender in lands & goods that according to the constitution was forfeited to the Commonwealth or attainder or conviction of felony, but it was the interest

or estate which the offender was entitled to during his life that by the law in force at the passage of the act was forfeited. The reversionary interest, or, in other words, that part of the estate which remained after the death of the offender, according to these laws, resided in him after conviction, must still be understood to reside in the offender though attainted or convicted. See Borland's case, 4 Mason, 174. Under the confiscation law, the fee, the perpetual ownership could not be & was not forever divested.

188 The explanatory or restrictive resolution of the original act is explicit on the subject; but, in the absence of any such legislative declaration or abridgement, the original act would have been impotent to have accomplished that object, because of the insuperable inhibition of the constitution which forbids forfeiture beyond the term of the offender's life.

Had not the resolution been resisted by the executive, or passed notwithstanding, the potent arm of the highest tribunal in the land would undoubtedly, at the proper time, have struck a fatal blow, branded the high-handed measure, and denounced it as a lifeless form, which should never have seen the light of day.

The fee, then, continued to dwell in the offender, but barren of any profit, good, or advantage to him—without any right on his part to make it available in any manner during his life, though it necessarily remained subject to claims upon it.

It is "incredible that Congress, while providing for the confiscation of an enemy's land, intended to leave in that enemy a vested interest he might sell, & with the proceeds of which he might aid in carrying the war against the Government. It can only be

189 upon the theory that the fee was not absolutely divested; that the creditors, anterior to the law, whose claims were secured by lien or mortgage, could have *been* recognized the right of coercing payment by subjecting the property, notwithstanding confiscation and sale, and that at the offender's death it passes to his heirs, who take as though no forfeiture had ever occurred.

It is true that the proceeding is *in rem*, but the law of the *situs* requires it to be conducted contradictorily with the owner, in order that the judicial sale may operate a valid divestiture of the title or fee, if the defendant were not the owner of the fee by the proceeding and sale following. But even assuming and conceding that the offender, Surget, was actually divested of his entire ownership, perfect & imperfect, and that the fee vested in the United States, the divestiture would not be entitled to more effect than it *it* would have if Surget had himself, in the absence of any condemnation and sale, voluntarily parted with his ownership of the property.

In such a case, under the terms of the contract of sale on which Shiff bases his claim, the alienation of the property

190 by Surget could not have prejudiced him, as it contains the clause *de non alienando*, which, under the laws of this State, authorizes him to proceed in the enforcement of his debt against the original debtor and mortgagor, regardless of the transfer and ignoring it, the property passing to the transferee or purchaser *cum mere*, or subject to that clause. From that standpoint it is there-

fore immaterial whether the fee remained in Surget or passed to the Government. It was divested by the proceedings of 1880 & vested in Shiff.

Prescription is a means of defense created by the law for the necessity of things to which the individuals, in whose favor it exists, may have recourse or not as they may be deem better. They are under no obligation to set it up. When, therefore, they are sued in a case in which they could not urge it, and do not do so, they are deemed to have waived the benefit of it. Under such circumstances, those who take from them, their heirs or assigns, are as equally estopped from pressing it as effectually as the debtor himself.

As Surgett did not set up prescription or pre-emption prior
191 to the sale of the property, but, on the contrary, waived it, and recognized title in Shiff, as is shown by the silence & his will, the claim of Shiff continued in existence, was legal and valid, and the expropriation became complete in his favor, as creditor, purchasing as if there never existed any prescription law.

These and any other defences which could have been & were not set up by Surgett before the sale, the plaintiffs, who are Surgett's heirs & successors, and who have acquired no rights which he did not possess, and could not have exercised, cannot be permitted to assert and urge after his death.

I therefore concur in the decree.

Mr. Justice MANNING "concurring:"

One of the appalling consequences of attainder in England was the corruption of blood, whereby its heritable quality was destroyed, and the person attainted was incapacitated from taking lands or other hereditaments from his ancestors, or retaining those he already had, or transmitting them by descent to any heir. This consequence was forever averted from our country by the explicit constitutional
declaration, that while Congress shall have power to declare
192 the punishment of treason, no attainder shall work corruption of blood, nor shall any forfeiture extend beyond the life of the person attainted. And therefore an act of Congress which should assume to confiscate the fee would be unconstitutional and null, and does not need an accompanying explanatory resolution to confine and restrict its operation.

Since, then, corruption of blood is not produced, and cannot be, by any proceedings for attainder or confiscation, the capacity to take, retain, and transmit lands is not affected, except by a forfeiture pronounced, and that cannot extend beyond life. Thus, as the Government cannot in any manner touch the fee, so it cannot for any purpose hold the fee.

The fee must therefore either remain in the obnoxious party, with power to dispose of it by will, in which event the plaintiffs have no interest, and subject to a forced alienation of it by creditors, in which event the defendant acquired a good title, or it must be in abeyance during the continuance of the life estate. In either case the proceedings taken by the creditor have divested and transferred the fee

to the purchaser under the executory process, and his title is
193 therefore unassailable.

I concur in the decree.

Mr. Justice FENNER "concurring:"

I think it desirable to avoid, as far as possible, any decision upon vexed questions, arising under the confiscation laws, not absolutely essential to the determination of the instant controversy. Whatever inferences may be drawn from the expressions under—by the Supreme Court of the United States, in discussing the effect of these laws, that tribunal has not, as yet, explicitly decided whether or not condemnation & sale under them operated to destroy the will-making power of the owner as to real estate.

I prefer not to anticipate the decision of that court upon this purely Federal question.

If we can decide this case upon the strength of defendant's title, we need not concern ourselves about the weakness of that of plaintiff.

I am equally indisposed to vex my mind with the consideration of the metaphysical problem as to where the fee of this property resided during the lifetime of Surget, the solution of which
194 has been, thus far, consistently declined by the Supreme Court of the United States.

For the purpose of this controversy, it matters not where the fee resided. Wherever it was, the Supreme Court has unequivocally settled the doctrine that it remained subject to prior mortgages & privileges in favor of third persons, which were entirely unaffected by the confiscation proceedings.

Neither did these proceedings affect the debt due by Surget to Shiff which was secured by the mortgage.

The object and effect of the *pact de non alienando* under our laws are to secure to the mortgage creditor the right to foreclose his mortgage by executory process directed solely against the original debtor, and to seize and sell the mortgaged property, regardless of any subsequent alienation.

We make a long step towards eliminating irrelevant questions and exposing the real & pivotal question in this case when we announce as an indispensable proposition that if the executory proceedings against Surget were regular; if at the date thereof the debt subsisted; if the mortgage securing the same were valid, and had been preserved by proper inscription and reinscription, the
195 purchaser at the sale under these proceedings would have acquired a valid title against all the world, regardless of who owned the fee at the date thereof.

Indeed, I do not understand that the learned counsel of plaintiffs would dispute the proposition. They claim that the title is invalid as against plaintiffs on two grounds, viz: 1st. That at the date of the foreclosure proceeding the debt of Shiff had been extinguished by prescription. 2d. That his mortgage had lapsed as to them by the failure to reinscribe it within the term prescribed by law.

At this point we encounter other elementary propositions, too plain

for dispute, establishing that, whatever force the above objections might have if urged by third persons, they have none in favor of the mortgagor or his heirs. As to prescription, the mortgagor having failed to plead it, its effect is forever lost as to him and his heirs.

As to the want of reinscription, neither inscription or reinscription is necessary to preserve the mortgage as against the mortgagor and his heirs.

By this process of elimination we reduce this controversy
196 to a single question, viz: Are the plaintiffs heirs of Surget, claiming title by virtue of inheritance through him, or are they third persons as to him, deriving title from the bounty of the United States, conferred upon them under the merely descriptive quality of heirs of Surget?

They have their right upon the latter hypothesis. If we confine ourselves to the plain language of the acts of Congress, it is difficult to discern any foundation for such a theory.

In the act of July 17th, 1862, and the explanatory joint resolution, taken together, Congress provided for the seizure and condemnation of enemies' property, and declared that when condemned it should "become the property of the United States, and may be disposed of as the court shall decree, & the proceeds thereof paid into the Treasury for the purpose aforesaid; but no punishment or proceedings under this act shall be so construed as to work a forfeiture of the real estate of the offender beyond his natural life."

This is precisely what Congress has said, and all that it has said on this subject.

It has not assumed to say who should take the property
197 after the offender's death. It has not declared that at his death the property should vest in the offender's next of kin, or of the persons who under the *lex loci rei sitæ* would be his heirs.

If such were the case, the contention of plaintiffs might find strong support. But Congress has simply declared that the proceedings shall not operate upon the property at all beyond the period of the offender's natural life. At that moment they cease to have effect and are as if they had never taken place.

Suppose the provision had been that the proceedings should not work a forfeiture of the real estate of the offender beyond the period of twenty years from their date. At the expiration of that term would not the offender, if still alive, resume the property?

If he were dead, would not his heirs take it? And why would they take it? Simply for the reason that he was dead, and that they were his heirs, and as such entitled to take whatever would belong to him if living.

And so, under the law as it is, Congress has not touched the property for any period beyond the offender's life.

198 However absolute the ownership of the United States, no property in the thing beyond that period ever passed to the United States. Congress has never said a word about the estate after the death. At that moment the ownership of the United States ended. The "forfeiture of the real estate of the offender"

ceased to have effect. Nothing disturbed or divested the offender's ownership except the forfeiture, & that divestiture could only continue so long as the forfeiture had effect. A forfeiture for a term cannot extend beyond the term; and when the term expires the estate divested thereby reverts in the original owner, if living, in his heirs, if dead.

We are not concerned here with questions which might arise as to whether, under the common law of real property, the fee is susceptible of dismemberment, or of being in obeyance or *in gremio legis* or *in nubibus*. We are dealing here with a statute, the exercise of legislative power, which modifies and changes existing laws according to its will. If Congress had power over the subject-matter it could dismember the fee or place it where it chose.

The word fee in its ordinary use embodies a composite idea.
199 Discarding the feudal characteristics of the English system, Mr. Abbott gives the following definition: "In American law a fee is an estate of inheritance without condition, belonging to the owner and alienable by him or transmissible to his heirs absolutely and simply."

Such an estate existed in Surget as to its property prior to its condemnation. Now the act of Congress, as interpreted by the Supreme Court of the United States, destroyed certain elements of Surget's fee. It annihilated his ownership during his life. It destroyed absolutely his power of alienation. We may concede, for the sake of argument, that it destroyed even his testamentary capacity in relation to the property, but it unquestionably left in him the faculty of transmitting to his heirs absolutely & simply, because that is a faculty coming into play only at the moment of his death, and when the forfeiture terminated & ceased to have any effect whatever on his rights. Plaintiffs cannot claim the title to this property after Surget's death as derived from the United States, because the United States never took or held any such title. They cannot claim that the United States, in the exercise
200 of legislative power, transferred the estate directly from Surget to them, irrespective of their right of inheritance, because no such transfer is found in the statute and no language susceptible of any such construction. Their only title rests upon their right of inheritance from Surget, upon their being his legal heirs, the beneficiaries of the right vested in him, & never forfeited, to transmit this property to his heirs. Conceding the destruction of Surget's testamentary capacity, the utmost they could claim would be the position of forced heirs under our law, whom the ancestor could not disinherit. But even such heirs, though treated in our law, in many respects, as creditors, could not oppose to the title of defendant herein the defenses of prescription of the debt or lack of reinscription of the mortgage.

The learned judge of the court *aqua* rejected the demand of plaintiffs on the ground that Surget's testamentary capacity was not affected by the confiscation proceedings, and that his instituted heir succeeded to his rights at his death.

Without intimating any opinion on that question, I have
201 preferred to avoid it, & to reach the decree on different grounds.

For these reasons I concur in the decree.

Rehearing refused.

Judgment & Decree. Extract from Minutes.

MONDAY, *May 19th*, 1884.

The court was duly opened, pursuant to adjournment.

Present: Their Honors Felix P. Poche, Robert B. Todd, Thomas C. Manning, Charles E. Fenner, associate justices. Absent: Edward Bermudez, chief justice.

On Appeal from the Civil District Court for the Parish of Orleans.

CATHERINE SHIELDS, Widow, *et als.*
vs.
ARTHUR SHIFF. } No. 9091.

Judgment affirmed.

Mr. Justice Todd concurs in the decree.

The chief justice and Justices Manning and Fenner concur for the reasons stated in their separate opinions.

202 *Petition for Rehearing. Filed May 26th*, 1884.

Supreme Court of Louisiana.

CATHERINE SHIELDS *et al.*
vs.
ARTHUR SHIFF. } No. 8102.

To the hon. the judges of the supreme court of the State of Louisiana:

The petition of Catherine Shields & *als.* humbly pray a rehearing of the opinion and decree rendered in the above-entitled cause on the 19th day of May, 1884, for the following, among other, reasons:

1st. That as next of heir they are entitled to take the real estate confiscated from an offender at the end of the life estate.

2d. That the fee to the confiscated estate vests absolutely in the Government, with the right to dispose of same at pleasure; that under the law the next of kin takes the estate as a party designated, and through the law, not as an inheritance.

3d. That this follows from the declared purpose and intent of the law, that the offender shall be deprived from the moment of confiscation & forfeiture of all interest in and to the property.

4. That thereafter no act of his or proceedings against him can affect the fee to the property.

203 5th. That any right of mortgage or lien which the court has said continues on the property, notwithstanding confiscation, attaches only because *quo ad* such lien or mortgage — then a

quasi-alienation of the fee, that such mortgage or lien must therefore be prosecuted against the property.

6th. That under the well established decisions of the courts of Louisiana, such mortgage or lien must be a subsisting valid lien, in full force when its execution is sought; that in the instant case all mortgages sought to be enforced by the executory proceedings invoked were, upon their face, barred by prescription.

7th. That as to this property, and under the will, these plaintiffs were third parties, not affected by proceedings against Eustace Surget.

Wherefore petitioners prays that a rehearing be granted them, & for general relief

(Signed) BREAUX & HALL, *Attorneys.*

May 24, '84.

Rehearing Refused. Extract from Minutes.

WEDNESDAY, *May 28th*, 1884.

The court was duly opened, pursuant to adjournment.

204 Present: Their Honors, Edward Bermudez, chief justice, and Felix P. Poche, Robert B. Todd, Thomas C. Manning, Charles E. Fenner, associate justices.

His honor, the chief justice, pronounced the judgment and decree of the court in this case.

CATHERINE SHIELDS, Widow, etc., *et al.*
vs.
ARTHUR SHIFF. } No. 9091.

It is ordered that the rehearing applied for in this case be refused.

Writ of Error. Filed June 4, 1884.

Supreme Court of Louisiana.

CATHERINE SHIELDS *et al.*
vs.
ARTHUR SHIFF. } No. 9091.

Writ of Error.

Copy of a writ of error lodged in the clerk's office of the supreme court of the State of Louisiana. Copy in pursuance of the statute in such cases made and provided this fourth day of June, one thousand eight hundred and eighty-four.

(Signed) GUS. H. BREAUX,
Att'y for Plaintiff in Error.

205 UNITED STATES OF AMERICA, *ss:*

Supreme Court of La.

CATHERINE SHIELDS *et al.*
vs.
ARTHUR SHIFF. } No. 9091.

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, at New Orleans, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Louisiana, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit between Catherine Shields & *als.* and Arthur Shiff, wherein was drawn in question the validity of a treaty, or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of or an authority exercised und- said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in
206 in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of said Catherine Shields *et als.*, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right [and] according to the laws and cus-
207 toms of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the fourth day of June, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] (Signed) E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

GUS. H. BREAUX,
Att'y for Plaintiff in Error.

Allowed by me upon bond of one thousand dollars ($1,000), conditioned as the law directs.

N. O., June 4th, 1884.

(Signed) E. BERMUDEZ,
Chief Justice Supreme Court of Louisiana.

Bond for Writ of Error. Filed June 4th, 1884.

Know all men by these presents, that we, Catherine Shields *et al.*, as principals, and Benedetto Onorato, as surety, are held and firmly bound unto Arthur Shiff, of New Orleans, Louisiana, in the full and just sum of one thousand dollars, to be paid to the said Arthur Shiff, his certain attorney, executors, administrators, or assigns; to
208 which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 4th day of June, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas lately, at a term of the supreme court of Louisiana, held in the city of New Orleans, in a suit depending in said circuit court, wherein Catherine Shields & *als.* are plaintiffs and Arthur Shiff is defendant, being 9190 of the docket of said court, judgment was rendered against said Catherine Shields & *als.*, plaintiffs, rejecting their demand, and the said plaintiff having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Arthur Shiff, commanding him to be and appear at the Supreme Court of the United States to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such, that if the said Catherine Shields *et al.* shall prosecute their writ to effect, and answer all damages and cost if they fail to make — plea good,
209 then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

(Signed) CATHERINE SHIELDS *et al.*, [L. S.]
" By BREAUX & HALL, *Att'ys.* [L. S.]
" GUS. A. BREAUX, *Att'y.* [L. S.]
" B. ONORATO.

Approved:

(Signed) E. BERMUDEZ,
Chief Justice Supreme Court of Louisiana.

UNITED STATES OF AMERICA, }
District of Louisiana, } *ss:*

Personally appeared Benedetto Onorato, who, being duly s worn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, and that he is worth the sum of one thousand dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) B. ONORATO.

Subscribed and sworn before me, this 4th day of June, 1884.
[SEAL.] (Signed) T. McC. HYMAN,
Deputy Clerk Supreme Court of La.

Approved:
E. BERMUDEZ,
Chief Justice Sup. C't of La.

210 *Certificate of the Clerk of the Supreme Court.*

UNITED STATES OF AMERICA, *State of Louisiana:*

Supreme Court of the State of Louisiana.

I, George W. Dupre, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing two hundred and nine (209) pages contain a full, true, and complete copy of the transcript of the proceedings had in the civil district court for the parish of Orleans, in a certain suit wherein Catherine Shields, widow, etc., *et als.* were plaintiffs and Arthur Shiff was defendant; and also of all the proceedings had in this supreme court on the appeal taken by said Shields
211 *et als.*, which appeal is now on the files thereof under No. 9091.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this seventeenth day of June, in the year of our Lord one thousand eight hundred and eighty-four, and in the one hundred and eighth year of the Independence of the United States of America.
[SEAL.] GEORGE W. DUPRE, *Clerk.*

Certificate of the Chief Justice.

UNITED STATES OF AMERICA, *State of Louisiana:*

Supreme Court of the State of Louisiana.

I, Edward Bermudez, chief justice of the supreme court of the State of Louisiana, do hereby certify that George W. Dupre
212 is clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans; that the signature of George W. Dupre to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal at the city of New Orleans, this seventeenth day of June, in the year of our Lord one thousand eight hundred and eighty-four.
[SEAL.] E. BERMUDEZ,
Chief Justice of the Supreme Court of the State of Louisiana.

213 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana at New Orleans.

To Arthur Shiff, Greeting:

You are hereby cited and admonished to be and appear at the

Supreme Court of the United States to be holden at the city of Washington on the 2nd Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Lousiana at New Orleans, wherein Catherine Shields & *al.* are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Catherine Shields & *al.*, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison Waite, Chief Justice of the Supreme Court of the United States, this 4th day of June, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] E. BERMUDEZ,
Chief Justice of the Supreme Court of Louisiana.

214 [Endorsed:] R. Supreme Court. No. 9091. Catherine Shields & *al. vs.* Arthur Shiff. Citation.

Return.

Received June 4, 1884, by the U. S. marshal, and on July 8th, 1884, I served a true duplicate of this the original citation of error on Arthur Shiff, defendant in error herein, by leaving the same at his domicil in the parish of Iberville near the town of Bayou Goula, about 103 miles from the city of New Orleans, in the hands of Mrs. C. Shiff, his wife, an adult person living and residing at said domicil, who informed me that the said Arthur Shiff lived and resided at said domicil, but was absent in Europe at the time of said service, and also that she was the wife of said Arthur Shiff, defendant herein.

J. R. G. PITKIN,
U. S. Marshal East. Dist. of La.
By DAN. A. ROSE,
D'y U. S. Marshal.

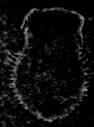
Personally appeared before me Dan. A. Rose, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true duplicate of this the original citation of error on the defendant in error, named within, as set forth in his official return hereon.

DAN. A. ROSE,
D'y U. S. Marshal.

Subscribed and sworn before me, July 11, 1884.

E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

Endorsed on cover: Louisiana supreme court. No. 997. Catherine Shields *et al.*, plaintiffs in error, *vs.* Arthur Shiff. Filed 4th October, 1884.



Supreme Court of the United States

OCTOBER TERM OF 1887.

No. 61.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

CATHERINE SHIELDS *et als.*, PLAINTIFFS IN ERROR,

vs.

ARTHUR SHIFF, DEFENDANT IN ERROR.

ASSIGNMENT OF ERRORS.

The Supreme Court of Louisiana erred:

1st. In holding that the fee to confiscated property being in the government during the lifetime of the offender, his next of kin take the property at his decease through him; whereas having no transmissible interest in the property, none could be acquired through him.

2d. In not holding that as to the confiscated property, these plaintiffs were really third persons, having rights distinct and totally different from those of decedent.

3d. In holding that a proceeding of foreclosure of confiscated property on a prescribed claim, and a perempted and dead mortgage, directed against the offender, could conclude the rights of beneficiaries under the confiscation act.

CATHERINE SHIELDS *et als.*,	*Supreme Court of the United*
PLAINTIFFS IN ERROR,	*States.*
vs.	*October Term of 1887.*
ARTHUR SHIFF.	*No. 61.*

This action is brought by the next of kin of Eustace Surget, to recover from the defendant, Arthur Shiff, the property described in the pleadings.

It is alleged that plaintiffs are the nearest of kin to the said Surget.

That he was owner in 1860 and thereafter of the property described.

That in the United States District Court, in 1862, the United States caused to be seized and proceeded regularly to condemn and confiscate the said property: and that a decree of condemnation and confiscation was rendered: in May, 1865, the property was sold at marshal's sale, and bought by Arthur Shiff, who has been in possession ever since.

That Surget died February 1st, 1882.

The prayer of the petition corresponds with the allegations: it prays that the plaintiffs be decreed owners of the property and for rents from February 1st, 1882.

The answer, after a general denial, sets up title to the property in defendant by reason of purchase thereof in the suit of Shiff vs. Surget in a State Court.

Later on, the will of Surget appointing his wife universal legatee was put in evidence: and upon that, the further defense is urged that the plaintiffs herein are without interest in the property.

The facts necessary to a decision are simple and not disputed.

In May, 1865, at the suit of the United States against Eustace Surget, and upon proceedings, the property in controversy was condemned, under and by virtue of the act of Congress of July 17th, 1862. Under this decree it was sold, and purchased by Arthur Shiff, the present defendant, as appears from the Marshal's Return, page 53 of the record.

And it is admitted that Mr. Shiff has been in possession of the property from the date of the Marshal's Sale and was still in possession on the trial of the cause in the court of first instance. Record, p. 4.

In January, 1860, Mr. Hunt, the owner of the property, granted a mortgage to Mr. Shiff, to secure the payment of six promissory notes, maturing in January, 1862. Act, pp. 21, 22, and notes, pp. 69, 70, 71.

Surget, in April, 1860, purchased the property from Hunt, and assumed the payment of these mortgage notes. Record, p. 17,

At the confiscation sale in May, 1865, Shiff being still the holder of these notes, bought the property for $22,000, as appears from the Marshal's Return on the writ of *venditione exponas*. Record, p. 53.

And on his intervention was allowed these entire proceeds, less costs and expenses, in part satisfaction of his mortgage claim: and these proceeds are credited, rateably, on the notes, as of date June 8th, 1865. Record, pp. 69, 70, 71.

The certificate of the Recorder of Mortgages shows that this mortgage was not re-inscribed after January 20th, 1860, the date of its original inscription, until the 2d day of April, 1879. Record, p. 25.

June 22d, 1880, upon a petition by Arthur Shiff, filed to foreclose the mortgage granted to secure the six notes given in 1860, the usual order of seizure and sale issued. Record, p. 58.

This proceeding was directed against E. Surget, who being an absentee, was represented by a *curator ad hoc*, appointed by the Court.

At the sale under this proceeding Shiff became the purchaser. See Return of Sheriff, Record, p. 62.

The title thus obtained is pleaded in bar of the instant action.

By his will, Surget bequeathes all his property, both personal and real estate, of whatsoever nature or description, to his wife. Record, pp, 6, 7.

It is conceded, and at all events abundantly proved, that the plaintiffs are the nearest of kin of the deceased, E. Surget; and, therefore, his heirs at law.

The case, upon these facts, presents the following questions:

1st. Have the plaintiffs a standing in Court, to claim the property in controversy, notwithstanding the will of Surget?

2d. Was the foreclosure proceeding, under which Shiff acquired the title of 1880, a valid proceeding as against these plaintiffs?

The correct answer to these questions is decisive of the controversy.

ARGUMENT.

I.

Have the plaintiffs a standing in Court to claim the property in controversy, notwithstanding the will in favor of Mrs. Surget?

The terms of the will are: "I give and bequeath to my beloved wife, Mary Atwell Surget, née Linton, all my property, both personal and real estate, of whatsoever nature or description, etc."

By what possible means can this be construed into a devise of property which did not belong to the testator, and in which he had no possible interest?

We understand readily that an offender, part of whose property was confiscated under the act of 1862, could transmit property, by will, which had not been confiscated, or which he had subsequently acquired: but it is impossible to understand that the will of a decedent can affect property confiscated, any more than property which he had disposed of during his life-time: simply, at death, when the will took effect, it was not his to will away.

The will then does not purport in terms to give or bequeath anything other than that which belongs to the decedent: and if it did would be of no effect: for under the law of Louisiana, the legacy of a thing belonging to another is null. Civil Code, Article 1639.

In confirmation of the principle, the Code provides that the legacy of a certain object is extinguished by the loss of the object. C. C., Art. 1643, 1700.

It has been suggested, that Courts will not look to the laws of Congress to ascertain who are the heirs of a decedent: clearly not: but no one does this: what is suggested is clearly different: it is that an offender cannot affect the destination of confiscated property, or create a transmissible interest in himself in it, by making a will instituting an heir.

Let us suppose for a moment, that the will under consideration contained a clause to this effect: I hereby bequeath to A. B. the property (in controversy). The question presented would not be whether A. B. could be made a devisee by the decedent's will: but whether the decedent had any interest in the confiscated property which he could transmit to a devisee or legatee.

If the question were presented in this form, this Court could not consistently hold that the offender had any interest in the

property which enabled him to devise it—for you have held uniformly that he was without any sort of interest in confiscated property: in principle there is no possible difference; and none can be made by changing the form of the question merely.

It seems evident that the act of Congress did not and could not have contemplated a reservation which would have left a control of the confiscated property in the power of the offender: this Court has so declared repeatedly, as we shall show hereafter.

To the objection which might be raised, that the estate of Surget is testate; and that everything dependent upon it (conceding that confiscated property descends through the decedent, which we deny), we answer that an estate may be in part testate and in part intestate.

Demolombe, Vol. 21, livre III, titre II, Chapter V, Sec. 1, No. 11, says: Notre Code admet * * * *

2°. Que l'on peut ne disposer par testament que d'une portion de son patrimoine, et mourrir *partis testatus, partis intestatus*: quoting Pothier to the same effect.

The law of Louisiana is the same.

But, we repeat, the purpose of the act of Congress, in so far as the provisions of confiscation are concerned, was to withdraw absolutely from the offender the means of supporting a rebellion against the government, as has been repeatedly decreed by this Court.

To this end it seized, and disposed of all the interest of the offender in the property: it severed his connection with it, both during life, and for all time to come: his "estate was separated entirely from that of his heir's after his death," to borrow the expression of this Court from the case of French vs. Wade, 102 U. S. 132. It was "a devolution upon the United States of the offender's entire right." Wallach's case, 11 Wallace, 209.

Again: "If a forfeiture is equivalent to a grant or conveyance to the Government, how can anything remain in the person, whose estate has been forfeited, which he can convey to another?"

See also Pike vs. Wassel, 94 U. S. 714.

In the case of Chaffraix vs. Shiff, 92 U. S. 214, involving the title to the property in controversy, on the deed of E. Surget, your honors decreed it to be valueless: if his absolute deed, ordinarily binding on all who acquire through him, could produce no effect whatever, how can he control the confiscated property by his will?

Ordinarily any covenant, for instance of warranty, which is made as to property, is binding and obligatory upon the heir: C. C. 1999, 2008. But in the case of French vs. Wade, where Wade had bought his own property at confiscation sale against him, and thereafter sold it, with a full warranty of title, this Court held, that his sons were not barred from claiming the property by this warranty. The language of the Court is: "By the condemnation and sale, Wade's estate was separated "entirely from that of his heirs after his death: and the heirs "are not estopped by his warranty from asserting their title," 102 U. S. 134.

If the heir is not bound by the warranty, how can it be said that he is concluded by the will of the offender? Affecting the destination of the property by will, is only attempting, in another form, to do, that which Surget and Wade both tried to do by their warranty deed: which this Court denied them the right to do.

In the Wade case the precise question decided was, whether or not the heirs of Wade were bound by an obligation of warranty of the title to property bought by him at the confiscation sale of his own property, and resold by him under full warranty? The obligation rests as surely for the warranty of the

author, as the right of heirship resides in the descendant We have seen that the Court adopted the view, as to the confiscated property, that the offender could impose no obligation, because all relation to that special property, had ceased in him by the confiscation and forfeiture: and it seems to us, that the Court in obedience to the same principle, must now necessarily say that the right of the next of kin to take the confiscated property under the law, is unaffected by any will or testament.

In the Wallach case, the contention was made that his heirs could not take by descent unless their father, at his death, was seized of an estate of inheritance: *e. g.* reversion or remainder: the answer was, "that, even at common law, it was not neces-"sary that the ancestor should be seized to enable the heir to "take by descent. Shelly's case is, that, where the ancestor "*might* have taken and been seized, the heir shall inherit." But, outside of this, the instant case, as that of Wallach, must be determined by the statute.

On this branch of the case, it is unnecessary to go over what the Court said in the Wallach case. We need only add, that the heir, for whose special and exclusive benefit, the reservation under the act of Congress was made, takes the property through the act: we shall have occasion to show hereafter, that the fee to the confiscated property, during the life time of the offender, devolves upon the government here, as in England: the reservation made is merely descriptive of the person who takes the property, not of rights.

In the case of Ware, Administrator vs. Hylton, 3 Dallas, 243, the construction of Article 4 of the treaty under discussion, which reads: "It is agreed that creditors, on either side shall meet "with no *lawful impediment* to the recovery of the full value, in "sterling money, of all *bona fide* debts, *heretofore contracted*," the contention was made, that "the provision is, that *creditors* shall recover, etc., and there was no creditor, at the time of

the *treaty*, because there was then no debtor, he having been legally discharged. The creditors described in the treaty were not creditors generally, but only those with whom debts had been contracted, at some time before the treaty; and is a description of *persons*, not of their rights." It is proper to state that by an act of the Legislature of Virginia, all debts due to English subjects were ordered paid into her treasury, and thus cancelled.

So, we say, that the reservation made under the act, and which this Court has repeatedly declared to be in favor of the *heir*, is a description of *persons:* persons known to the law as its creatures: the next of kin: the heir presumptive or apparent: whose rights depend upon the statute—excluding for this, and reasons already stated, the idea that the offender could control the destination of confiscated property by will. The distinction between the heir and devisee is well known. In the one instance the estate is cast upon the party by law: in the other, by the act of the testator: the same distinction obtains between the heir and legatee in the civil law.

There is nothing inconsistent, therefore, as has been supposed, in the position assumed by these plaintiffs, in alleging themselves to be heirs, so as to take this property, and claiming that as to their rights upon confiscated property they are third persons to the decedent: in other words that they do not take through him: we repeat, they are merely persons designated under the act to take the property, and their rights depend upon the statute: they could not be descendible from one who had no rights of any kind to transmit.

The Supreme Court of the United States have held the confiscation Act, as explained by the resolution, to mean that the fee was withheld from absolute confiscation, *exclusively for the benefit of the heirs*. "They, and they alone, could take it at the termination of the life estate." Pike vs. Wassel, 94 U. S. 714; see, also, Wallack vs. Van Riswick, 11 Wallace, 209.

This is equivalent to saying that the heirs are not affected by the forfeiture: that, as to them, the result is precisely as if the language of the confiscation Act and resolution had been, that at the death of the offender, the heirs, or the "next of kin," (which are convertible terms), would take the fee.

That is certainly the import of the language of the Act: and we repeat, the Court has said, in substance, that it is the equivalent of the language used.

The question, then, is, whom did Congress mean should take the fee to confiscated and forfeited property, at the termination of the life estate?

Was it meant that the "heir of blood," "the next of kin," upon whom the law devolves the estate, should take the fee; or that the devisee or legatee should take it?

Heretofore, we have seen what are the accepted rules of interpretation of statutes: applying those principles to the case at bar, then we say, that when the statute limited the effect of forfeiture to the natural life of the offender: in other words, and in the language of the Court, that such effect was not to reach the heirs, who alone could take the fee at the termination of the life estate; the natural and obvious sense of the language of the statute is that the heirs, as contradistinguished from the devisee and legatee, are the parties whom Congress intended to protect.

There are obvious reasons for this interpretation: in the first place, if Congress had intended to permit the offender to dispose of the confiscated property by will, there is no reason why it should not have said so; in the second place, if the purpose was to take property absolutely from the control of the offender during his lifetime; to so separate him from it that he could, by no act or deed of his, affect it in the least degree, it is inconsistent to suppose that it was intended to permit him to control it by will; in the third place, the reason of the limita-

tion has been declared to be to place the confiscated property of the offender within the protection of the Constitution against attainder; but attainder could only affect the heirs of blood; in the fourth place, the purpose and the effect of the act was to put the property of the offender absolutely beyond his control, without limitation, or qualification, whatever; and therefore beyond the reach of his will.

Thus, whether we consider the language of the Acts as judicially constructed, or its purposes, and the necessity for its enactment, we arrive at the one conclusion that the intent of Congress was to sever all connection between the confiscated property and the offender; to place it absolutely beyond his reach at any time; and to establish a reservation as to the property in favor of the heir alone.

But we are told that the successor of Surget is to be determined by the law of the State where the property is situated; that by this law Surget had the right to institute an heir; that by the designation of heir to take the fee, Congress could only have meant any heir, either at law or instituted, as *nemo est haeres viventis*. We have already shown that a devisee or legatee could not take the fee under the Act of Congress. But again, this assumption of our learned opponents is based upon the error, that there is no distinction between a devisee or legatee, and an heir.

For the purposes of the confiscation Act, we must seek definitions of expressions used therein in the common law: The heir is "he who is born or begotten in lawful wedlock, and upon whom the law *casts the estate* in lands, tenements and hereditaments immediately upon his death of the ancestor.

Bouvier Law Dictionary, verbo Heir—Leach vs. Cooper's Lessee, Cook's Tenn. Rep. 252.

The devisee is a person to whom a gift of real proporty has been made by last will and testament.

In the one instance the estate has been cast upon the party by law; in the other, by the act of the testator; the same distinction obtains between heirship and legacies under the civil law.

Evidently, however, the language of the confiscation Act could not have referred to the varieties of devisees which the testators might institute under different statutes in different States; because, in the first place, it would give the offender the means of enabling to defeat the purposes of the confiscation Act, in that he could thereby control the property through his will: and in the next place this would have left its interpretation subject to no permanent rule; but have remitted such interpretation to the control of the circumstance of State residence of the offender, or of location of the property. It seems to us both more natural and logical to hold that the statute is to be interpreted by the common law rule, which would avoid both of the suggested difficulties.

Aragon and Schmidt, which treats of the descent of the property, and which I think is *obiter*.

Nor is the maxim *nemo est haeres viventis* obnoxious to the construction invoked, because the term heir, or its equivalent, is not necessarily used to denote a person whose ancestor is dead. There are many cases where it applies, although the ancestor is living; there it means the *heir apparent*. In this sense it is frequently used in the statutes.

Dwarris on Statutes, Gould & Son's ed., p. 199.

Lockwood vs. Dessup, 9 Conn. 274.

Cox vs. Beltshoover, 11 Missouri, 142.

Therefore, we say, that in this statute the intent was that the fee to the confiscated and forfeited estate, which vested in the Government, was to be transferred to the *heir apparent, the heir presumptive*, at the death of the offender; in no event could the latter be permitted to designate to whom it should go, by

will or otherwise: the Government alone could and did determine that the heir of the blood should not be prejudiced by the forfeiture; it held the fee, and placed it where it chose; it held it during the lifetime of the offender, for the benefit of his heir-at-law at his decease.

This answers fully the pretense that the right to institute an heir was neither forfeited nor taken away by the statute; the Government simply legislated as to confiscated property, leaving the offender free to "will" as to any other property of which he might die possessed: as to confiscated property, he was declared to hold no relation of ownership or control which would entitle him to say aught concerning its destination either during his life or after his death; the two things are perfectly reconcilable.

Title to property, in a civilized country, cannot be abeyance: it must reside either with the individual or the Government: the idea of property, is inseparable from that of ownership: in the matter of confiscated property, it is severed from the offender absolutely: completely: it does not devolve upon the heir until the death of the offender: it cannot be *in imbibus:* and we say, therefore, that it devolves upon the Government as it did in England.

Can there be any doubt that but for the reservation of the concurrent resolution, the fee simple title, of confiscated property, would have devolved upon the Government?

Its power to confiscate has been judicially recognized: if it could confiscate for the whole, it could, at its pleasure, modify the exercise of the right: it could take a fee, to be dealt with at pleasure: and there would seem to be no objection to its fixing the conditions of the taking at one time as well as another: the consequences would remain the same.

Again, I say, therefore, that the right of the designated person, the heir, is not derived from the offender: but from the

Government, which alone owned and controlled it: that, therefore, as to the property in controversy, they are third persons, who, under the authorities cited, are unaffected by the proceedings against the original debtor.

C. C. 3369; Rev. Statutes, 3141.

Lemelle vs. Thompson, 34 Ann. 1043.

Walton vs. Bondurant, 30 Ann. 11.

Shepherd vs. Cotton Press, 2 Ann. 100.

This brings us to the consideration of the second question presented for adjudication, viz:

II.

Was the foreclosure proceeding, under which Shiff acquired the title of 1880, a valid proceeding as against these plaintiffs?

At the outset the Court's attention is directed to that which is obvious enough, viz: that Surget and Shiff could not by a consent, decree, confer and divest rights which the law forbade them from divesting and conferring directly: in other words they could not do indirectly, through the instrumentality of consent judicial proceeding, that which they could not do otherwise without infringing the law: now, these parties had been told by judgment of this Court that they could not contract with each other as to the fee of the confiscated property: thereafter, with a claim prescribed on its face, a mortgage dead for want of a principal cause, and lapsed by time, consequently with a perfect defense patent on the face of the action, they consent that a proceeding shall be had, by which it is now averred the claim, in this suit, is defeated. What, but a consent and void proceeding was this?

It is said that the proceedings in confiscation only affected the interest of the offender: that the rights of mortgage were unaffected by them; that as the mortgage contained the act of

non-alienation, proceedings against Surget were all sufficient: and great reliance is placed upon the case of the heirs of Avegno vs. Schmidt, 118 U. S. 297.

I do not purpose questioning the doctrine of that case in so far as it holds that proceedings directed against the original obligor, under an act of mortgage importing a confession of judgment, on a valid, subsisting claim, are sufficient, under the laws of Louisiana, to *divest* title: under the facts of that case, the decision may be conceded to be correct: but the instant is easily distinguished from that case. In Avegno vs. Schmidt, the action of foreclosure was brought on a living, valid, subsisting obligation; and under our law, as interpreted by numerous decisions, a proceeding against the original debtor, on a mortgage with the pact *de non alienando* was sufficient: but the facts in this case, are totally different: there was no existing claim, or mortgage when the action was instituted: the claim was prescribed, and the mortgage had fallen with it: it had not only prerempted, but is was dead, with the claim: as to all persons who had acquired rights in that property there was no means of reviving the claim and mortgage, so as to affect their rights to the property.

It is just as certain, under repeated decisions of our Supreme Court, that on a claim so circumstanced, no proceeding can be had affecting, in any degree, third persons, as that on a valid, subsisting mortgage you may proceed without regard to third persons; and I proceed to bring the authorities to the notice of the Court.

In the first place, the authorities are full to the effect, that without *authentic* evidence of the interruption of prescription, no action *via executiva* lay. "The jurisprudence on this point is too firmly established to be questioned," says the organ of the Court, in Peyroux vs. Lacoste, 18 Annual, 627, quoting approvingly:

Splane vs. Daniel, 11 Rob., 449: McMasters vs. Mather, 4 A. 419: Union Bank vs. Dosson, 7 A., 548: Fowler vs Beatty, 10 A. 275. See also Taylor vs. Hill, 21 A. 627.

The evidence in this case is, that the notes matured in January, 1862: consequently, these notes were prescribed on their face in January, 1867. As the proceeding of foreclosure commenced only in 1880, it is clear, that the writ of seizure and sale was illegally granted: that it should have been denied, (we may add between parenthesis that so gross an illegality being permitted, is but cumulative evidence that the foreclosure was a consent proceeding, affecting no right).

Consent degrees decide nothing: they merely authenticate private agreements, rendering them executory between the parties. Their effect as to third persons is that of a transaction in authentic form.

Union Bank vs. Marin, 3 A. 34. Michie vs. Armat, 15 A. 225.

The muniment of title of the defendant then, is a consent judgment and sale, the repetition by means of a judicial ceremony of the act of sale from Surget to Shiff on which your Honors have set their seal of condemnation, to defeat the purposes and ends of the confiscation act.

We assert with confidence that this Court will not permit the preceding to bar the rights of these litigants.

The next position which we urge upon the Court is, under the decisions of our Court, applicable to the facts in this case, that, whenever a party seeks to lay hands on property in which third parties have acquired rights, by executory process, it must be necessarily on a real subsisting mortgage: and not a pretended one: such person can be debarred of no defense by any proceedings between others to which he was no party, he may defend an absence or insufficiency of inscription, which defense is not open to the mortgagor: but in addition he may

oppose all defenses which the mortgagor could have opposed: and the mortgagor cannot deprive him of them by waiver or otherwise: nor can his rights to urge them be affected by any judgment to which he was not a party.

Such are the well established doctrines of our law, consecrated in the fullest sense, in the well considered case of Louisiana vs. Citizens Bank, 33 A. 708. They are doctrines applicable to the facts of the instant case, as distinguished from the case of Avegno vs. Schmidt, where the foreclosure was on a valid, subsisting mortgage: for, as if to emphasize the distinguishing doctrine, the Court say in the Louisiana case. "The presence of the pact (*de non alienando*) does not make that a mortgage which is not a mortgage:" *a fortiori*, it does not make that a claim, which is extiguished.

This case affirms substantially the doctrine in the case of McDaniel vs. Lalanne, 28 A. 663, where the question was whether third ~~power~~ party, where property was sought to be made liable, on a mortgage, to secure payment of a note prescribed on its face but on which judgment had been rendered against the maker, could plead prescription of such note: the Court say: "We "are unable to perceive why he should not be allowed to plead "prescription in such a case. He was no party to the suit: and "his rights were not affected by the judgment. If the note "were prescribed when the suit against the debtor was institu-"ted, the mortgage was dead, for the accessory obligation per-"ished with the prescription of the principal obligation: and "it was not in the power of the creditor or of the Court, to re-"vive the mortgage affecting property in the hands of third "persons." See N. O. Canal & Banking Company vs. Recorder, 23 A. 293.

But our law goes further, and holds, that where a note ~~revived~~ secured by mortgage has been revived by promise to pay, it creates a new debt, but does not renew or create a mortgage,

Succession of Kugler, 23 Ann. 456. The case of Larthet vs. Hogan, 1 Ann. 331, and of Grayson vs. Mayo, 2 Ann. 927, as very strong and very clear to the point. When the obligation is prescribed, the rights acquired under such prescription are beyond the reach of the debtor, and cannot be changed by any act of his, to their detriment.

Thus, it appears, under these authorities, that in 1880, when the proceedings of foreclosure were instituted against Surget, the notes had been prescribed for long years: they were extinguished and the collateral obligations securing them, had perished with them: there was, therefore, no valid, subsisting obligation: no valid, subsisting incumbrance of, or right to, the property confiscated, upon which, proceedings prejudicial to the government or to the person designated by the act of confiscation to take it, could be maintained; as to such person the right to urge the accrued prescription, and the lapsed inscription of the mortgage subsisted, and subsists now.

The right of a creditor to pursue confiscated property in the hands of the purchaser of the life estate, depends upon his having conventional special rights upon the property itself, such as a right of mortgage; or a deed of trust: the reason is obvious; in all such cases, there had been an alienation of right in the property itself, by the owner, which could not be seized, and confiscated: for all that the act permitted was the seizure and confiscation of the entire interest of the offender; no more. Day vs. Micou, 18 Wallace, 161.

It seems obvious, that if such rights did exist, and are permitted to expire and lapse without enforcement, then the situation is precisely as if such rights had never existed: and the destitution of title and interest as to the offender was as complete as if the creditor had been simply a general creditor without special conventional rights in the property: and as such he cannot proceed against the fee to confiscated property.

There is then the most cogent reason for asserting that the attempt to affect the title, the fee, to the property in controversy by the foreclosure proceedings, was futile.

In support of the position that the proceedings of foreclosure were insufficient to give title, under the facts of this case, I now ask the attention of the Court to this further view:

It has been sufficiently shown in repeated decisions, that whatever became of the fee of confiscated property, it was certainly absolutely divested from the offender: in Wallach's case the Court asserted it to be "a devolution upon the United States of the offender's entire right:" and it is there assumed that as forfeiture is equivalent to a grant or conveyance to the government of the United States: nor, as the Court say, was what was sold under the confiscation act, technically a life estate: the conclusion was, "that it cannot dwell on the offender, we have seen, is evident." This view is emphasized and affirmed in French vs. Wade, 102 U. S. 132, and in Chaffraix vs. Shiff, 92 U. S., 214.

This would seem quite sufficient to demonstrate that proceedings conducted against the offender, on barred and defunct claims, are without effect as to third parties, possessed of the property: for it seems conceded and in its opinion our State Court assumes that if the plaintiffs are third persons, their reasoning does not apply: but, I propose now, to show briefly that the title to confiscated property, does devolve upon the United States: that under the reservation of the statute, it there remains pending the life of the offender, when by the happening of the suspending event, it devolves on the heir, for whose exclusive benefit the reservation was made.

If so, then, *quo ad* this property, the heir is in really a third person, in the full sense of the law, as his rights are not acquired through the decedent: but directly from the statute.

The common law obtains in the United States: the system is derived from that of England: it has full force except where modified by statute: Story on the Constitution, Vol. 1, § 157.

Journal of Congress, October 14, 1774, p. 27, *et seq.*

We may well, therefore, look to the source whence we derive it, for light, as beacons to guide us, in ascertaining rights arising under it, in so far at least, as not modified by statutes.

As has been determined, the right to confiscate the property of enemies, during the war, is derived from a state of war. It is a right inherent in the Government, growing out of the right of self-preservation: it is a common law right. Ware vs. Hylton, 3 Dallas, 227.

In England it reached not only the property of the offender, but in cases of treason, conviction operated corruption of the blood; as well as forfeiture of estates—and the forfeiture vested in the King, all lands and tenements of inheritance, whether *fee simple* or *fee tail*. Blackstone, vol. 2d, p. 381.

The forfeiture of fee was absolute and vested in the King; absolutely vested in the power, which, through its judicial tribunals, had the right to declare the forfeiture and outlawry—that the blood of the offender was corrupted, was but a second and independent consequence, the reason for which was that offences against the Government should be restrained, not only by the sense of personal punishment, but also by the passions and natural affections. The purpose of forfeiture of the estate is to take from the offender the ability to do harm by depriving him of the means of so doing; the result is to vest the forfeited property in the sovereign; he may make precisely such disposition of it as he chooses. (See Heirs of Emerson vs. Hall, 13 Peters, 413.)

What we wish to make evident is that the fee to confiscated property, vests in the sovereign, with us, as it does in England,

whence the common law is "our birthright and inheritance." The same causes, purposes and proceedings operate, under the law, the same results.

The constitutional power to confiscate and obtain fee to property, in the Government of the United States, is maintained in the Miller case, 11 Wallace, 292. It flows from the right of self-preservation, under the common law.

When, therefore, Congress passed the Act of 1862, to confiscate the property of rebels, it is reasonable to suppose that the contemplated effects of the Act would be similar to forfeiture of property in England, in so far as divesting the fee of the property from the offender, and vesting it in the sovereign. It is a matter of history, that the scruples of the President, in view of the constitutional inhibition upon Congress to pass a bill of attainder, caused the passage of the resolution explanatory of this Act, restricting the forfeiture of the real estate to the natural life of the offender.

The necessary implication from the limitation is that the forfeiture would else have been absolute and complete; so far, therefore, from indicating that the fee, on forfeiture did not vest in the Government, it clearly indicates, as the opinion of Congress, that it did so vest; and that it was the intention that on the happening of a certain event, indefinite only as to time, the fee should revert to the heir.

We say, therefore, that in the enactment of the law under consideration, Congress, in the exercise of its unquestioned power, contemplated all the consequences of a forfeiture at common law, as they existed, notedly in England, whence our general system is derived, except only in so far as modified by the Act itself; the first and most important consequence being the vesting of the fee to the confiscated property in the sovereign.

Now, in England, the conviction, imported the corruption of blood; has it ever been supposed, or suggested, that though the

heirs were incapacitated from taking anything under the law, the offender could rehabilitate them by devise or will, or divert the property, by instituting devisees?

The ready objection would have been, that he was powerless to affect the fee to property which belonged to the Government; and that none could not reach, as devisees, the fee which was divested from the devisor.

And it would have sounded as strange doctrine to an English Court, that this undoubted result would have been a deprivation of the right to make a will in the ancestor.

It has been urged that defendant was in possession of the property from the date of the Marshal's Sale, the 3d of May, 1865, with the consent of the owner: from which, though not boldly claimed, it is sought to have the Court infer that prescription was interrupted: and authorities are quoted to show, that pending the possession of pledges, prescription does not run against the secured debt: but the possession must be that of property pledged to secure the debt, to prevent prescription from running: it is not pretended that this was the case: the possession of Shiff was simply that of a person enjoying a life estate.

New Orleans Insurance Association vs. LaBranche, 31 Ann. 845.

In the Avegno case, the sole question decided, as we understand the decision, is, whether or not a party holding a valid, subsisting mortgage on a property confiscated, at the instance of the United States, could proceed thereafter to enforce his rights of mortgage? Whether the confiscation and sale divested these mortgage rights or not, as well as the interest of the offender in the property?

It is evident, therefore, that the question as to the channel of descent of the property to the claiming heir, was not in-

volved in the discussion: whatever was said on this subject was *obiter dictum*.

As was claimed, and as we concede in such a case, the claimant could, under the laws of our State, under the non-alienation clause of his mortgage, disregard all persons other than the original obligor.

That a part of the opinion is in strange conflict with the previous opinions of this Court, which has consistently declined to state heretofore, where the fee lay during the lifetime of the offender: who, in the Wallach case, stated that the heir took, under the statute: who, in the Wafe case, refused to enforce a contract of warranty on the son, in which he would have been bound, beyond all cavil, if he had taken the property by inheritance merely from the father. We submit, therefore, that this dictum, which is the only thing which careful scrutiny has enabled me to find, is not to be regarded as authoritative.

This case cites the case now under review, on writ of error, as authority for the decision in the case of Avegno: I have, I think, sufficiently distinguished them, to claim that the decision in one is not applicable to the other, and can form no legitimate authority for or against any proposition maintained in the other case. And it would be strange, indeed, if a case, pending on writ of error, could be cited approvingly in another case, and then this last decision cited to maintain the decision under consideration. It would be tantamount to citing the opinion on review, as authority for its own approval.

Under the laws of Louisiana, the Supreme Court is bound to make a synopsis of its decisions in each case: we may, therefore, accept as the decided points in the instant case, those declared by the Court in its synopsis, without entering into a consideration of the fair opinions rendered.

The Court hold, that by confiscation and sale the offender is stripped of all rights, titles and claims to the condemned property: and hence that he can make no valid deed or will of same.

That the fee vests in the Government, but in trust: whereas. I have demonstrated, I think, that the fee vests in the Government absolutely.

That the heir succeeds to the offender by virtue of the laws of nature and descent.

If so, then, the author can will the property, for nothing prevents him in the law from so doing: two answers to this proposition can be made, either or both of which are conclusive: first, by the laws of nature and descent, the heir of blood can take only that estate which belongs to the decedent: but in this very case this Court says he has none, which he can transmit: second, if the decedent has an estate which he can transmit, then he can transmit by will, if he so chooses: and this Court says he cannot affect the destination of confiscated property by will.

Logically, then, if the offender is stripped of all rights and title to the confiscated property: if the title devolves on the Government, and the heir of blood succeeds to it as a designated person, it follows, that, as to that property, he is a third person to the decedent: and may urge all the nullity of proceedings used as a bar to his rights: and this much seems to be conceded by the State tribunal, if the positions herein advocated are legal.

I submit therefore, that the judgment of the Supreme Court of Louisiana, should be ~~revoked~~ reversed, and judgment entered for plaintiff.

Respectfully submitted,

GUS. A. BREAUX,

Attorney for Plaintiffs in Error.

October, 1887.

APPENDIX.

1639, C. C. When the testator has bequeathed a thing belonging to another person, the legacy shall be null, whether the testator knew or knew not that the thing did not belong to him.

1643, C. C. The legacy of a certain object is extinguished by the loss of the object; but if the object is only destroyed in part, as if a house bequeathed has been destroyed by fire, the legacy subsists for what remains, that is, for the land on which it was situated.

1700, C. C. The legacy falls, if the thing bequeathed has totally perished during the lifetime of the testator.

3369, C. C. The registry preserves the evidence of mortgages and privileges during ten years, reckoning from the day of its date; its effect ceases, even against the contracting parties, if the inscriptions have not been removed before the expiration of this time, in the manner in which they were first made.

But this rule does not obtain with regard to the mortgage to which husbands are subjected for the dowry and other claims of wives, and tutors and curators towards minors, interdicted and absent persons, whose estates they administer,

The re-inscription of mortgages is also dispensed with in certain cases provided for by special laws.

Revised Statutes 3141.

Article three thousand three hundred and thirty-three of the Civil Code, shall be so amended that it shall be the duty of the recorder of mortgages, or person acting as such, to cancel and erase, on the simple application in writing to that effect, by the owner, creditor of the owner, or other party interested, all inscriptions of mortgages which have existed, or may exist on their record for a period exceeding ten years, without a renewal of such inscription; Provided, however, That this section shall not apply to mortgages, against husbands for the dotal and other claims for their wives, to mortgages against tutors and curators, in favor of minors, interdicted or absent persons, nor to mortgages in favor of the property banks.

Supreme Court of the United States,

OCTOBER TERM, 1884.

No. 997.

CATHERINE SHIELDS ET AL., PLAINTIFFS IN ERROR,

vs.

ARTHUR SHIFF, DEFENDANT IN ERROR.

ERROR TO THE SUPREME COURT OF LOUISIANA.

To the Honorable Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Arthur Shiff, defendant in this Court, and in the Courts of Louisiana in the cause aforesaid, respectfully represents to the Court that the writ of error, allowed and issued in this cause, was improvidently granted; for that, there was not drawn in question and decided in the Supreme Court of Louisiana any one of the questions alleged in the said writ, nor in the Statutes of the United States, to authorize the writ to be allowed, and directed to that Court; nor to authorize this honorable Court to exercise a jurisdiction to re-examine the judgment of the said Supreme Court of Louisiana; but, that, the judgment of the said Supreme Court is final. The defendant prays of this Court to dismiss the writ of

error, and the suit and to charge the plaintiffs with full costs in this cause.

In case of the refusal of the motion to dismiss, the motion to affirm the judgment, under the rule number 6, is submitted and for the causes expressed in the rule to justify the motion.

JOHN A. CAMPBELL,

Attorney for the Defendant.

SUPREME COURT OF THE UNITED STATES.

CATHERINE SHIELDS ET AL.,

vs.

ARTHUR SHIFF.

Motion to dismiss the writ of error and the cause for the want of jurisdiction in the Court aforesaid.

I.

A STATEMENT OF THE RECORD FILED IN THIS COURT.

The plaintiffs commenced a petitory action in the Civil District Court of New Orleans, to recover a number of lots of ground in the possession of the defendant, and the mesne profits.

They claim to be the legal heirs of Eustace Surgett who died, February 1, 1882, without lineal heirs; they being the sister and the only nephews and nieces of Surgett. It is conceded that Surgett purchased this property in the year 1860, and that the plaintiffs are his nearest of kin as stated. The deed by which he acquired the property is in the Record, pp. 17–21, made by Robert P. Hunt and his wife, to Surgett, of date April, 1860. At the time of the death of Surgett in 1882, defendant had possession and received rents of the property thereafter as owner.

II.

The defendant's answer is at page three of the Record. There is an issue upon the heirship of the plaintiffs. The defendant, at the date of the purchase of the property, by Surgett, in April, 1860, from R. P. Hunt, *owned a mortgage made by Hunt and his wife* to secure a debt of $20,000, of Hunt, in the form of negotiable notes, which encumbered the entire property and which mortgage is produced. Record, p. 22. The mortgage is shown by authentic act and contains the pact *de non aliendo*, in which Hunt obligates himself not to alienate or encumber the property to the prejudice of the act of mortgage. Record, p. 22, fo. 53.

In the sale made by Hunt and wife in April, 1860, to Surgett, the existence of this mortgage of Hunt and wife to Shiff for $20,000 with interest and cost of foreclosure is recited and declared, and Surgett assumes to satisfy the mortgage of Shiff, and to comply with all of the conditions and clauses of that mortgage until a payment should be made. Record, pp. 17–21.

In June, 1880, the defendant, Shiff, obtained from a State District Court at New Orleans, to enforce the payment of the sum due upon the mortgage of Hunt, and the assumption of Surgett before mentioned, a writ of seizure and sale, or what is termed executory process in the Code of Practice.

Surgett was then living. The property was seized, the notices of seizure made. There was a sale under the process, and at the sale, August 3, 1880, Shiff was the purchaser. The Sheriff's deed, dated August 30, 1880, is to be seen, Record, pp. 28–31; the entire record is to be seen, Record, pp. 56–66. It will fully appear that the proceedings are regular, and that Shiff has a title founded on a mortgage of R. P. Hunt, the owner, and vendor assumed by his (Hunt's) vendee, Eustace Surgett; and which binds this property, and which has been foreclosed in the legal and accustomed manner in the District Court. After the purchase by Shiff, the proceeding known in Louisiana as the proceeding by

MONITION to enquire of irregularities and illegalities was resorted to, and a decree of homologation, which declared that the Court was satisfied of the regularity of the sale, of the publication of notices according to law, the price was truly stated, confirmed the sale. Record, p. 67.

The answer of the defendant (Shiff) was thus established by the most authentic testimony, viz.:—the mortgage of Hunt and wife for the sum of $20,000, dated January 28, 1860, acknowledging that debt as shown by notes bearing interest at eight per cent. annually, Record, p. 21; the *sale* of Hunt and wife of the property mortgaged to Eustace Surgett, dated April 18, 1860; and the assumption of the debt and the covenant to pay contained in that deed of conveyance by the purchaser, Eustace Surgett, Record, p. 17, see p. 19, fos. 44, 45, 46; the seizure and sale, Record, pp. 56–66; sheriff's deed, 28–31; the monition and proceedings under it, Record, pp. 67–72. The answer asserted that Shiff was the owner of the property embraced in the petition of the plaintiffs by a paramount title derived from Hunt and wife, an owner prior and paramount to any Eustace Surgett ever had, and under which and subordinate to, Surgett had ownership at all, by his own assumption and covenant as contained in the deed which conferred all the title he ever had and to which he was a party. This is the whole case and as plain as a case can be exhibited.

III.

On the 24th January, 1865, an information was preferred under the confiscation act of 1862, against Surgett, charging all of the various acts specified in that act for cause of forfeiture, among others, that he was an officer of the Confederate army and aided an armed rebellion.

The *sale was made the 31st May*, 1865, and Shiff purchased, obviously, in ignorance of the superior title he had as mortgagee. The opinion held on the subject is probably what is expressed in

the Record, p. 4. The counsel for the plaintiff objects that it is immaterial to this suit what Mr. Eustace Surgett may have done, or what may have been done against Mr. Surgett after the confiscation of the property. That no proceeding against Mr. Surgett, who was entirely disconnected with that property, can possibly affect the heirs, *who* BECAME THE OWNERS OF THAT PROPERTY IN FEE SIMPLE, *from the date of the confiscation, and that any proceedings against him during his lifetime cannot affect their title, and therefore it is immaterial and irrelevant.* Record, p. 4, note of Mr. Breaux. Whatever the United States confiscated, this defendant (Shiff) bought and paid for. Whatever Hunt and his wife hypothecated to Shiff in 1860, was not confiscated; nor was the debt from Surgett to Shiff; nor the security for that debt *confiscated;* nor could any creditor or heir of Surgett claim one cent of any of this property till the discharge of that mortgage made by Hunt and his wife in 1860.

IV.

THE JUDGMENTS IN THE COURTS OF LOUISIANA IN THE RECORD.

The following is a copy of the judgment rendered in the Civil District Court of New Orleans, Record, p. 35: This judgment was affirmed, Record, p. 86.

JUDGMENT, RENDERED JANUARY 2, 1884.

CATHERINE SHIELDS, WIDOW, ET AL.,

vs.

ARTHUR SHIFF.

For the reasons assigned in the written opinion of the Court and on file, it is ordered, adjudged and decreed that there be judgment in favor of defendant, Arthur Shiff, and against the plaintiffs, dismissing the said plaintiff's demand at their costs, and further decreeing the said Arthur Shiff to be the owner of the

property described in plaintiff's demand and purchased by said defendant at Sheriff's sale, on the 3d day of August, 1880, in the suit No. 10,780, of the late District Court for the Parish of Orleans, entitled Arthur Shiff *vs.* Eustace Surgett.

Judgment rendered January 2, 1884.

Judgment signed 11th January, 1884.

A. L. TISSOT, *Judge.*

It will be seen that the title which the defendant Shiff set up in his answer found on the second and third pages of this record, was established as valid and superior to the title which is set forth by the plaintiff's as the nearest of kin of Surgett. Opinion of Tissot, Judge, Record, pp. 31–35.

This judgment, manifestly, determines nothing except that the sale of property once owned by Eustace Surgett under the authority of a decree rendered by a Court of competent jurisdiction against Eustace Surgett, and founded upon a mortgage executed by a prior owner of the property, and which Surgett acknowledged and covenanted to pay, divests Eustace Surgett and his natural heirs of all right in that property. Manifestly there is not drawn in question the validity of a treaty, or statute of, or an authority exercised under the United States, in that judgment. These plaintiffs claim only as heirs of Surgett under the conditions of the code of Louisiana, and this claim or pretension is not sufficient to recover property sold in the life of Surgett in order to pay Surgett's debts under a judgment against Surgett. Nor is there drawn in question of the construction of the constitution, or of a treaty, or of a statute, or of a commission held under the United States; nor was there any decision made which extended beyond the local law of Louisiana embodied in the judgment. The judgment is clear, exact and comprehensive, of all that was needed to decide the title to the land between these parties. The opinion of the judge of the Civil District Court is direct and apposite to the support of the judgment he rendered and signed. Record, pp. 31–35.

In the Supreme Court there were four opinions, all of them carefully drawn, and the entire Court concurred to affirm the judgment of the District Court as recorded. Record, pp. 74–85.

V.

There was another issue presented in the *answer* of the defendant Shiff, which it was not important to decide, but which is adverted to in the opinions. Surgett removed to France after the war; there he died the first of February, 1882. He made an olographic will dated July, 1872, wherein his wife is *instituted a universal legatee.* In a codicil to the will he "*forcibly enjoins* upon his dear wife, or should she be not living at the time of his demise, upon his natural heirs, to make immediately unto Arthur Shiff" a clear and valid title to certain property situated on Rampart street, &c., &c. Record, pp. 6, 7.

This codicil bears date the 12th day of November, 1879. It is obvious that the heirs of Eustace Surgett must be ascertained from the code and statutes of Louisiana. It has never been supposed that we should inquire of any Act of Congress to ascertain who are to take an estate by succession from a deceased citizen of a State of the Union.

The will constitutes Madame Surgett the universal legatee. "A universal legacy is a testamentary disposition by which the testator gives to one or several persons the whole of the property which he leaves at his death." C. C., 1606. Surgett left no ascendants nor descendants living at the time of his death. *No forced heirs* under the code of Louisiana.

The will of Surgett in favor of his wife was the institution of an heir under these conditions.

In Louisiana there are three kinds of heirs which correspond to three kinds of successions. Testamentary or instituted heirs; legal heirs or heirs of blood; and irregular heirs. "The person who has become the universal successor of the deceased, who is possessed

of all his property and rights, and who is subject to the charges for which the estate is responsible, is called the heir no matter whether he be such by law, by the institution of a testament, or otherwise." Revised C. C., 884. "A universal legacy is a testamentary disposition, by which the testator gives to one or several persons the whole of the property which he leaves at his decease. When, at the decease of the testator, there are no heirs to whom a proportion of his property is reserved by law, the *universal legatee, by the death of the testator, is seized of right of the effects of the successor*, without being bound to demand the delivery thereof." Revised C. C., art. 1606, 1609.

"The effect of instituting an heir being the same as the institution of a legatee, the law is uniform; or to speak definitely, one of these words is a synonym of the other. Thus disappears a diversity in the ancient law." This is an extract from the report of the framers of the Napoleon Code.

Motifs et discours, p. 422.

3 Touillier, Tit. Don. and T., no. 492, p. 282. 5 Ann. 199.

15 Louisiana R., 562.

Burnside's Succession, 35 Ann.

It will be seen, therefore, that according to the law of succecsion in the State where the property is situated, that whatever succession Eustace Surgett had to transmit was legally and validly devolved upon Madame Surgett, the universal legatee, and not upon the heirs by blood.

This would be a complete answer to the suit of these plaintiffs independently of that which arises out of the foreclosure of the mortgage and the sale of the property. The will of Surgett is in the Record, pp. 6, 7, fos. 14, 15.

Nor are we able to discover that the constitution of the United States, nor the treaties and statutes of the United States, have any sort of connection with the subject matter of this controversy.

The United States exhausted their faculties in reference to the land embraced in the petition by the sale made under the decree of condemnation rendered in the Circuit Court of the United States. A forfeiture applied to lands is a punishment annexed by law to some illegal act by the owner of the lands, whereby he loses a part or all of his interest therein, and they go to the party wronged as a recompense for the injury he has sustained.

2 Black, Com., 267.

The lands were forfeited in this case during the natural life of the offender to the United States. The United States sold the estate forfeited, and no question arises upon the right of the purchaser therein.

The opinions of the Court of Louisiana contain authorities which establish that the judgment of confiscation did not impair any right held by any third person as a mortgagee, or having any real right in the land. The opinions of this Court are all one way on the subject.

The English authorities are equally clear. "The crown or its grantee on forfeiture, takes the estate subject to all charges binding the party, though voluntary, if no fraud. But not subject to debts at large, and has the same equity to be relieved against a conveyance as the party had for a fraud upon him."

2 Vesey, Sr.

The grantee of the United States was Shiff, and Shiff acquired the entire right which the United States had. But Shiff, independently of that right, had a mortgage of the full ownership—the fee simple—and the purchase under this mortgage vested in him all the property which Hunt and wife had conveyed in 1860 in the act of mortgage.

When Surgett died in 1882, there was nothing for his will made in 1872—or the codicil made in 1879, to apply to or to operate on—

because of the title under the foreclosure. But for the decree of foreclosure Madame Surgett would have been entitled under the will, rather than the natural heirs.

JOHN A. CAMPBELL,
Attorney for the defendant in error.

SUPREME COURT OF THE UNITED STATES.

October Term, 1884, *No.* 997.

CATHERINE SHIELDS, ET AL.,
vs.
ARTHUR SHIFF.

To the plaintiffs in the suit aforesaid; or their attorneys, Brecux and Hall, of New Orleans, Louisiana:

The defendant in error will move the Supreme Court of the United States on the 25th January, 1885, at Washington city, or on such day after as the Court will appoint, to dismiss the writ of error in this cause and the said cause for the want of jurisdiction, and because the writ of error was improvidently allowed.

The matter of objection will be found in the motion and this brief.

JOHN A. CAMPBELL,
Attorney for the Defendant, Shiff.

DECEMBER 31ST, 1884.

JOHN MURPHY & CO., PRINTERS, BALTIMORE.

Supreme Court of the U. S.

CATHERINE SHIELDS ET AL.

vs.

ARTHUR SHIFF.

Statement of Facts.

The plaintiffs, as the nearest of kin of Eustace Surgett, claim in a petitory action, a square of land in New Orleans. The plaintiffs would have been entitled to the land except, that the defendant has a superior and a paramount title.

Eustace Surgett purchased this property in the year 1860 from R. P. Hunt and his wife. R. P. Hunt and his wife, in January, 1860, mortgaged the property to this defendant for $20,000, ascertained by notes.

In April after Surgett purchased the property subject to this mortgage. This mortgage was enforced under a proceeding of executory process, and at the sale Shiff purchased. There are monition proceedings and the sale was confirmed. The record of the District Court in New Orleans, the deeds made to Shiff by the sheriff. The Supreme Court of Louisiana affirmed the title of the defendant.

Avegno *vs.* Schmidt, 113 U. S. 203.

Day *vs.* Micou, 18 Wall. 156.

20 Wall., 114.

2 Black. Com., 267.

II.

Surgett made a will instituting his wife his heir. The universal legatee is seized of right of the effects of the succession without being bound to demand delivery.

C. C., Arts. 1606–1609.

The effect of instituting an heir being the same as the institution of a universal legatee, the law is uniform.

3 Touillier, No. 492, p. 282.

5 Ann., 199.

15 Louis., 562.

Burnside Succession, 35 Ann.

JOHN A. CAMPBELL,

Attorney for Defendant.

Supreme Court of the United States,

No. 997.

CATHERINE SHIELDS, WIDOW, ET AL.,

vs.

ARTHUR SHIFF.

MOTION TO DISMISS THE APPEAL BECAUSE NO QUESTION IS EXHIBITED WITHIN THE COGNIZANCE OF THE COURT.

The plaintiffs, as the nearest of kin of Eustace Surgett, deceased, would have been entitled to the property sued for, but for two insurmountable obstacles. Surgett was deprived of all of his title of every sort by a sale made under the decree of the district Court of the parish of Orleans, before his death enforcing a mortgage made by him under which Shiff was the purchaser; the Supreme Court of Louisiana decided that the proceedings were regular, and that the proceeding was not affected by prescription or other plea.

The facts of this case are of the like kind of those in a case of Bernard Avergno decided during this term, Mr. Justice Wood pronouncing the opinion and judgment.

A second obstacle, and quite as formidable as the other, that Eustace Surgett made a will and instituted as his heir, his wife. The forced heirs, had there been any, would have shared in the estate, if any; but these are collateral relatives, and yield to the universal legatee. Under the Confiscation Acts, the life estate was condemned and sold; but that was all. The Act of Congress made no interference with what remained. In this case the mortgage to Shiff was superior to the seizure as having been made some years before. The Supreme Court of Louisiana decided that the title, under the mortgage sale, divested Eustace Surgett of all of his title—of all the title he had in April, 1860, the date of the mortgage of Surgett to Hunt, which Hunt conveyed to Shiff. This title steers clear of any claim specified in the 709th section of the Revised Statutes. The United States confiscated and sold an estate, right, title, under the decree. Shiff purchased the land and holds that title. He bought the remainder under the mortgage decree—all in the life of Surgett. Surgett died and left a will making his wife his universal legatee.

The United States never made a title to any of these plaintiffs nor conferred a right upon them.

JOHN A. CAMPBELL,
For the Defendant.